Court of King's Bench of Alberta

Citation: Farouk Mohamed v Real Estate Council of Alberta, 2026 ABKB 84

Date: 20260206
Docket: 2401 13164
Registry: Calgary

Between:

Farouk Mohamed

Applicant

- and -

Real Estate Council of Alberta

Respondent

Memorandum of Decision
of the
Honourable Justice C.D. Millsap

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[1] This matter involves a statutory review of a decision of the Real Estate Council of Alberta (RECA) Appeal Panel. The Applicant, Mr. Mohamed, was the subject of disciplinary proceedings initiated under the *Real Estate Act* of Alberta (the *Act*) as a result of complaints made against him while practicing as a licensed associate real estate broker.

[2] The complaints were made in 2017 and after an investigation and subsequent "Phase 1" conduct hearing. Mr. Mohamed was found to have engaged in conduct deserving of sanction in 2022 The "Phase 2" sanction hearing then occurred in February 2023 with the decision following in May 2023. He appealed that decision to the RECA Appeal Panel and on May 6, 2024 the panel determined that the "Phase 2" hearing was flawed and remitted the matter back to a new panel to determine sanction.

[3] Mr. Mohamed asks this Court to effectively dismiss the matter against him in its entirety. For the reasons that follow, Mr. Mohamed's application is granted in part. The Phase 1 decision of the Hearing Panel is upheld however the Phase 2 decision is quashed though the matter shall not be remitted back to the panel for a new Phase 2 hearing.

FACTS

[4] The facts in this matter are not in dispute. As outlined in the prior paragraphs, Mr. Mohamed was a licensed associate broker and as such, he was subject to the regulatory oversight of RECA. It is effectively conceded by Mr. Mohamed that from 2015 to 2017 he was engaged in activity that was prohibited by RECA regulations. His employer made a complaint in August of 2017 and the complaint was investigated.

[5] For reasons that are still not fully understood the hearing related to these complaints did not conclude for more than 5 years after the complaints were initially made. Following the September 1, 2022 decision, the results of the "Phase 2" sanction hearing and costs decision were released in February and May 2023, respectively. Two days after the costs decision was delivered Mr. Mohamed appealed to the RECA Appeal Panel.

[6] The appeal hearing occurred approximately 10 months later with the appeal decision being delivered on May 6, 2024. In that decision the Appeal Panel declined to interfere with the results found in Phase 1 of the hearing but determined that Phase 2 was procedurally unfair and remitted the matter back for a new Phase 2 hearing in front of a "newly constituted panel".

[7] It is agreed by the parties that the remedy of "a new hearing in front of a newly constituted panel" is not an available remedy pursuant to the provisions of the *Real Estate Act* of Alberta. Mr. Mohamed now asks this court to intervene.

ISSUES

[8] The Respondent argues that a "preliminary issue" needs to be determined prior to considering the merits of the appeal. Specifically, the Applicant has sought to rely upon a supplemental affidavit that they opine is not properly part of the record. In oral submissions the Applicant countered that Court should give weight to the evidence contained within the impugned affidavit.

[9] For the reasons outlined in the written submissions of the Respondent, the Court will not give any weight to the contents of the September 17, 2025 affidavit. Briefly, this is a statutory appeal of an administrative tribunal, adherence to the limitations imposed by the statutory regime is a requirement, not an option. As noted in the now leading case on administrative review, ***Canada v. Vavilov*** 2019 SCC 65 at paragraph 83, and applicable to this issue, "...the reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was reasonable."

[10] While reasonableness is not the standard of review here, the above passage is an important reminder that the reviewing court must stay within the proper boundaries when conducting the appeal. Here, the boundaries are set by statute and the rules governing what is admissible evidence available for consideration are not flexible.

[11] The supplemental affidavit is inadmissible in both its failure to be properly part of the appeal record and the scope of the evidence contained therein.

Issue 1 – Did the appeal panel err in sending the "Phase 2" hearing back to a "newly constituted panel"?

[12] Clearly, they did. The remedial powers of the Appeal Panel are statutorily conferred, as such the panel is confined to give remedies that are specified by the legislation. Section 50(4) of the *Act* governs the power of the Appeal Panel and provides the explicit remedies that are available to an appellant. The remedy granted by the Appeal Panel is not within their jurisdiction and as such upon application of the standard of correctness, there is an error.

Issue 2 – Did the appeal panel err in their assessment of the applicability of the 3-year limitation period?

[13] The short answer to this question is, no they did not. An administrative disciplinary hearing is not a "prosecution". While offences under the *Act* may be referred to the Alberta Crown Prosecution service in which case the 3-year limitation period would apply, where the conduct of disciplinary proceedings are not engaged by Crown Prosecutors under the *Provincial Offences Procedure Act* (*POPA*), there is no "prosecution".

[14] Further, the language of the Act in imposing the 3-year limitation period, specifically references "offences". While seemingly a trivial difference, there is a difference between "conduct deserving of sanction" and an "offence". For conduct to constitute an "offence" it must be subjected to a prosecution under *POPA* and the additional safeguards that *POPA* provides to persons accused of an offence. Where the complaint is limited to "conduct deserving of sanction" and the available procedures for disputing and proving such conduct are limited to those found within the regulatory legislation, there is no "prosecution" as contemplated by section 81(4) of the *Act*.

[15] The Applicant here was not prosecuted within the meaning of that term in the *Act*, therefore the 3-year limitation period that pertains to prosecutions does not apply to him.

Issue 3 – Did the Appeal Panel err when it refused to consider the *Kienapple* principle?

[16] They did not.

[17] The Court agrees with the submissions on the Respondent with respect to the argument that an Applicant under the Act is confined to an appeal on the record, and is not entitled to a hearing de novo. As such, for an appellant to be permitted to raise a new issue on appeal they must successfully convince the panel that it is proper to do so. The Appeal Panel was not moved to allow this new issue to be argued and they were not satisfied that the issue was otherwise argued prior to the Appeal.

[18] The Appeal Panel was correct in their treatment of this. Much like the Appeal Panel did this court is not inclined to allow the ***Kienapple*** issue to be raised at this review, however, also much like the Appeal Panel, even if it should be given consideration on this review, the Applicant would not be successful.

[19] The rule in ***R. v. Kienapple*** stems from the requirement that a person not be tried for the same offence twice. For charges or allegations to come within the orbit of this rule the elements of the multiple counts in questions must be sufficiently similar as to cover both the same transaction(s) and have substantially overlapping legal elements. Contrary to the submissions of the Respondent, the legal elements of the offences need not be "identical". The impaired driving provisions of the *Criminal Code* is the most common example of the fact that identical legal

elements need not be shown for the ***Kienapple*** principle to apply. Put somewhat simply, if a single transaction makes it legally impossible for a person to be guilty of one offence but not the other, ***Kienapple*** is likely offended.

[20] Here, it is entirely possible that the Applicant could have been guilty of the prohibited conduct under section 53(a) of the Real Estate Rules and not section 17(a). There is one identical element, managing properties, however the remaining elements of the two allegations are sufficiently different and independent so as not to engage a fear of double jeopardy. Put another way, this is more similar to driving while impaired and driving while disqualified than it is to driving while impaired and driving while over the legal blood alcohol limit, the latter attracting a ***Kienapple*** stay, the former does not.

Issue 4 – Did the Appeal Panel err in failing to grant a costs award to the Applicant?

[21] They did not. The language used by the Appeal Panel in the May 6, 2024 decision was indicative of an "intention" to award costs, but was clearly subject to anticipated submissions. The Applicant's submission that the use of the word "intends" is akin to a final decision is without merit as this intention was communicated immediately prior to requesting that both parties to the appeal make submissions on costs.

[22] As pointed out by the Respondent, the expression of such an intention is rather meaningless without reference to a specific amount. The fact that the Appeal Panel correctly allowed for submissions on the issue of costs removes any doubt from the notion that this issue was still live before the panel.

[23] It is arguably an error for a judge or in this instance, a panel to announce an intention on how they will decide an issue before they hear submissions on the issue, however that error can certainly be corrected by subsequently allowing submissions and properly adjudicating the issue on the merits of the matter. It would be expected that despite announcing an intention to decide one way, the decider(s) would be open to all arguments put before them before finalizing their decision. There is nothing before this Court to cause it to conclude that they did anything but just that.

[24] The Applicant is correct to say that a decision maker is generally *functus* after making a final decision. The Applicant however has not in any way established that a final decision was reached by the Appeal Panel on the issue of costs and as such, the argument of *functus officio* fails.

REMEDY

[25] Upon finding an error, the court has powers conferred under section 52(7) of the *Act*. The Applicant urges the Court to explicitly or effectively grant a stay of proceedings or in the alternative, impose a final remedy of its own. The Respondent requests that the matter be remitted back to the Hearing Panel to have the sanctions and costs determined in accordance with the provisions of the *Act*.

[26] In this matter, as with any judicial review of an administrative tribunal, fundamental fairness is a key consideration for the court. It is inferred from the original decision of the Appeal Panel to remit the matter back to a newly constituted appeal that they were also alive to the issue of fundamental fairness.

[27] The concern that the appeal Panel was inferentially concerned with remains a significant concern of this Court. It is not clear that the Applicant would be treated fairly if his matter was returned to the original hearing panel and, despite the capable submissions of the Respondent, it is not simply enough to say that the Applicant has the option to make a case for a different panel to be constituted.

[28] The original hearing panel failed to discharge their duty of fairness. Sending the Applicant back to that hearing panel could not be said to be a just remedy for this error. The Appeal Panel was likely alive to that in crafting the extra-judicial remedy that they did. This Court is similarly disinterested in sending the Applicant back to the same panel given the history of this matter.

[29] The Applicant is indeed guilty of engaging in conduct deserving of sanction and the findings of the hearing panel in that regard will not be disturbed. The determination of the sanction he is deserving of however will not be left to the RECA Hearing Panel. Doing so would only subject the Applicant to a lengthier process than he has already had to endure, a process that has taken far too long and has been rife with problems and unfairness.

[30] For the Court to be satisfied that a just and timely conclusion to this matter will be delivered, the decision of the Appeal Panel to send the Applicant back to a newly constituted panel for penalty and costs determination is quashed and the Court will impose its own decision on penalty and costs pursuant to section 52(7) of the *Act*.

[31] Having reviewed the reasoning behind the original decision of the hearing panel to order fines of $41,500 and costs of $11,000 against the Applicant it cannot be said that at that stage of the proceedings that the fine and costs award were inappropriate. That said, it is abundantly clear that the Applicant did not have a fair hearing during Phase 2 and the fine and costs award were the result of that impugned process.

[32] Over and above the errors made by the hearing panel at Phase 2 that caused the Appeal Panel to remit the matter back for a new Phase 2 hearing, there has been inordinate and inexplicable delay that simply must be taken into account when determining the appropriate sanction for the Applicant. That delay has been exacerbated by the error made by the Appeal panel and the necessity of this judicial review.

[33] While this delay does not rise to the level of warranting a stay of proceedings, it must be taken into account and serves to mitigate the sanction. Had Mr. Mohammed been given a fair and timely hearing by the hearing panel, it is unlikely that the Court would have interfered with their decision: that is not the case though.

[34] In consideration of the findings at Phase 1, the relevant considerations noted by the panel at Phase 2, the fundamental errors made at the Phase 2 hearing and at the subsequent appeal, and the mitigating effect of the delay, the Court imposes a global fine of $7,500.00 against the Applicant for the conduct. Costs ordered against the Applicant will be set at $1.00. This nominal amount should serve as motivation to the Respondent, that justice delayed is justice denied, a regulatory body with the power that RECA has, simply cannot operate in what the Court would describe as a *laissez-faire* manner. The public that is protected by RECA and the professionals that are regulated by them both deserve better.

[35] With respect to costs for this appeal, there has been mixed success such that neither party can successfully claim costs against the other for this hearing.

Heard at the City of Calgary, Alberta on the 15th day of October, 2025.

Dated at the City of Grande Prairie, Alberta this 6th day of February, 2026.

C.D. Millsap
J.C.K.B.A.

Appearances:

Todd M Lee
for the Applicant

Gen Zha
for the Respondent