IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Superintendent of Real Estate v. Financial Services Tribunal,* 2026 BCSC 226

Date: 20260210
Docket: S249039
Registry: Vancouver

Between:

Superintendent of Real Estate

Petitioner

And

Financial Services Tribunal,
Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corp.

Respondents

Before: The Honourable Justice Hoffman

On judicial review from: An order of the Financial Services Tribunal, dated October 29, 2024 (*Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corp. v. Superintendent of Real Estate,* 2024 BCFST 5).

Reasons for Judgment

Counsel for Superintendent of Real Estate:	R.N. McFee, K.C. G.A. Cavouras E.R. Janzen
Counsel for Financial Services Tribunal:	R.J. Gage C. Wardrop
The Respondent Wei (Vicky) Wang, appearing in person and as representative of Vicky Wang Personal Real Estate Corp.:	W. Wang
Place and Date of Trial/Hearing:	Vancouver, B.C. October 29–31, 2025
Place and Date of Judgment:	Vancouver, B.C. February 10, 2026

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OVERVIEW

[1] The petitioner, the Superintendent of Real Estate (the "Superintendent"), seeks judicial review of a decision of the Financial Services Tribunal ("FST") setting aside a finding of professional misconduct made in a professional discipline proceeding initiated by the Superintendent against the respondents, Wei (Vicky) Wang, a licensed real estate agent, and her personal real estate corporation, Vicky Wang Personal Real Estate Corp. ("Wang Corp.").

[2] The decision under review arose from Ms. Wang's appeal of the initial decision by the Superintendent's delegate (the "Hearing Officer"), who, following a discipline hearing, concluded that Ms. Wang committed professional misconduct by acting in a conflict of interest in loaning $50,000 to her client for use towards the deposit on the purchase of a property in 2016 for which she acted as agent (the "Liability Decision" indexed at *Wang (Re)*, 2023 BCSRE 18). The Hearing Officer later held that Ms. Wang must pay a $5,000 penalty, take remedial courses, and cover enforcement expenses (the "Sanction Decision" indexed at *Wang (Re),* 2024 BCSRE 1).

[3] On Ms. Wang's appeal, the FST Panel Chair found the Liability Decision unreasonable and the process was unfair (the "Panel Chair's Decision" indexed at *Wei (Vicky) Wang and Vicky Wang Personal Real Estate Corp. v. Superintendent of Real Estate*, 2024 BCFST 5). The Panel Chair critiques the Hearing Officer's use of hearsay evidence and his failure to explain his conclusion that the loan created a conflict of interest. The Panel Chair set aside the Hearing Officer's Decision, and declined to remit the matter back to the Hearing Officer, in part, due to the delay that had occurred in bringing the matter to a hearing. Consequently, the Panel Chair found there was no basis for the Sanction Decision.

[4] The Superintendent says the Panel Chair erred in her application of the reasonableness standard by misapprehending the basis for the Hearing Officer's conclusion and by mischaracterizing issues of fact, and mixed fact and law, as matters of procedural fairness. As a result of these errors, the Panel Chair failed to

accord sufficient deference to the Hearing Officer. The Superintendent submits that the Hearing Officer's reasoning was transparent, intelligible, and justified and that his conclusion was within the range of possible acceptable outcomes. Further, it submits there was no unfairness in the Hearing Officer's treatment of the evidence or how he conducted the proceeding. Finally, the Superintendent argues that the Panel Chair had no statutory jurisdiction to effectively stay the matter by refusing to send the matter back to the Hearing Officer for reconsideration.

[5] Ms. Wang represented herself both in this proceeding and in the administrative proceedings below. Ms. Wang takes the position that the Court should not intervene in the Panel Chair's Decision, which she says upholds the interest of justice and promotes procedural fairness.

[6] At the hearing before me, the FST sought leave to go beyond its traditional role of providing explanatory assistance to the Court in order to make submissions on the merits of the Panel Chair's Decision on the basis that Ms. Wang is self-represented. The FST submits that there is no basis for this Court to interfere with the Panel Chair's Decision.

[7] For the reasons that follow, I find the Hearing Officer's Decision was reasonable and procedurally fair; and quash the decision of the Panel Chair. For reasons I will explain below, I decline to remit this matter back to the FST.

BACKGROUND

The Parties

[8] The BC Financial Services Authority (the "BCFSA") is a public body established through the *Financial Services Authority Act,* S.B.C. 2019, c. 14, s. 2 [*FSAA*]. It regulates the financial services sector in British Columbia including, those engaged in the real estate profession and who provide real estate services under the *Real Estate Services Act*, S.B.C. 2004, c. 42 [*RESA*].

[9] The BCFSA and the Superintendent replaced the former regulatory body, the Real Estate Council of British Columbia (the "Council"), on August 1, 2021. It was

the Council who originally investigated the complaint against Ms. Wang that gave rise to the disciplinary hearing at issue.

[10] Under s. 2.1 of the *RESA,* the Superintendent is the statutory decision-maker appointed by the BCFSA to exercise the powers and duties vested in or imposed on the Superintendent in that statute. Any of the Superintendent's statutory powers may be delegated: *RESA,* s. 2.1(3). The Hearing Officer explains the delegation of the Superintendent's two main functions, investigation/prosecution and adjudication/enforcement, in Ms. Wang's Sanction Decision: at paras. 23–24, 30–33. The Superintendent delegates the power to investigate conduct issues of the *RESA* licensees to legal counsel from the Compliance and Enforcement Department of the BCFSA. In parallel, the Superintendent's role as decision-maker with respect to ss. 42–53 of the *RESA* is delegated to BCFSA hearing officers to conduct discipline proceedings and ultimately decide if the licensee has acted contrary to their professional obligations, and if so, determine the appropriate discipline.

[11] Both Ms. Wang and her personal real estate corporation, Wang Corp., are licensed under the *RESA*.

[12] The FST is a specialized administrative tribunal created in 2004 to replace the former Commercial Appeals Commission and continued under s. 242.1 of the *Financial Institutions Act*, R.S.B.C. 1996, c. 141 [*FIA*]. The FST is the statutory body charged with considering appeals from statutory decisions that are authorized by six different financial and real estate sector statutes, including the *RESA.*

The Statutory Regime

[13] In furtherance of its regulatory mandate, the BCFSA has enacted rules that real estate agents are required to follow, the *Real Estate Services Rules*, B.C. Reg. 209/2021 [*Rules*]: *RESA,* s. 89.2. A breach of these rules constitutes professional misconduct: *RESA,* s. 35(1)(a).

[14] At issue in the disciplinary proceedings was whether contrary to Rule 30(i)–(j), Ms. Wang failed to take reasonable steps to avoid a conflict of interest in the

provision of real estate services to her clients and where a conflict of interest exists, to promptly and fully disclose the conflict to the clients. Due to the reform of the statutory regime regulating real estate agents, the *Rules* have undergone various amendments; however, the wording of the conflict of interest provisions at issue is largely the same today as it was in 2016.

[15] Part 5 of the *RESA* sets out the statutory framework for the investigation of complaints against licensed real estate agents and, where appropriate, for the conduct of disciplinary proceedings undertaken in relation to complaints.

[16] A person who is subject to a disciplinary order of the Superintendent may appeal that decision to the FST under s. 54(1)(e) of the *RESA*.

[17] Appeals to the FST are conducted on the record and are based on the written submissions of the parties and the record of the oral and documentary evidence received at the disciplinary hearing: *FIA,* s. 242.2(6).

[18] The remedies that the FST may order upon the hearing of the appeal are mandated in s. 242.2(11) of the *FIA* as follows:

> 242.2(11) The member hearing the appeal may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person or body whose decision is under appeal.

The Complaint

[19] In the summer of 2016, Ms. Wang acted as a real estate agent for her friend, ShuJun Li, and Ms. Li's husband, Qiang Xu, assisting them in purchasing two investment properties in the Lower Mainland, the Richmond Property and the Vancouver Property. For the purpose of the conflict of interest allegation against Ms. Wang, only the Richmond Property is relevant.

[20] On June 9, 2016, Ms. Li viewed the Richmond Property and made an unconditional offer to purchase the property. The offer required a deposit of $90,000 within 24 hours. Later that same day, the sellers accepted the offer. On June 10, 2016, Ms. Li asked Ms. Wang for $50,000 to help fund the deposit for the Richmond

Property. Ms. Wang agreed and, on the following day, deposited a bank draft with her brokerage for the purpose of paying the deposit. Ms. Wang prepared a receipt of funds record to record the $50,000 deposit on which she wrote “loaning to the Buyer temporarily”.

[21] On June 27, 2016, via the WeChat messaging application, Ms. Wang asked Ms. Li to return the $50,000. Ms. Wang testified at the discipline hearing that Ms. Li responded by asking Ms. Wang to pay her 55% of the commission on the sale of the Richmond and Vancouver properties. Ms. Wang agreed to the rebate, later testifying that she was fearful Ms. Li would otherwise not return the $50,000. Ms. Li then returned the $50,000, without interest, to Ms. Wang, prior to the closing of the Richmond Property transaction. Ms. Wang did not provide the commission rebate to Ms. Li.

[22] In October 2017, Ms. Li filed a complaint against Ms. Wang alleging that Ms. Wang had failed to provide her with the promised commission rebate of 55% on what Ms. Wang earned in respect of Ms. Li’s purchase of the two properties and had failed to deposit rental payment cheques on time. The complaint did not mention the $50,000 borrowed towards the deposit on the Richmond Property.

[23] The Council, through a council investigator, Janet Murray (later replaced by Danica Law in 2021), investigated Ms. Li’s complaint. Ms. Murray secured documentation from Ms. Wang, her managing Broker (Ilan Heller), and statements from Ms. Li and Mr. Xu, obtained via a third party, DanQiu Wealth Management. Ms. Murray was provided with WeChat application messages between Ms. Wang and Ms. Li which revealed that Ms. Wang had given Ms. Li $50,000 to help fund the deposit of the Richmond Property.

[24] The investigator asked Ms. Li and Mr. Xu about whether the $50,000 returned to Ms. Wang was an amount Ms. Wang had lent them. Mr. Xu responded by email, stating that Ms. Wang had lent him $50,000 as he “didn't have the deposit ready at the time, and was hesitant on the purchase, but [Ms. Wang] offered to help by lending [him] $50,000 Canadian dollars.”

Professional Discipline Hearing and Decision

[25] Given that this judicial review engages procedural fairness, it is important to describe in some detail the proceedings leading up to Liability Decision and Sanction Decision of the Hearing Officer.

Initial Hearing

[26] The BCFSA issued a notice of disciplinary hearing to Ms. Wang in 2019. The matter was originally set to proceed on June 12–13, 2019, and then adjourned several times: first to November 2019, second to January 2022, and then finally set for January 25–26, 2023.

[27] The BCFSA amended the notice multiple times over the course of the four years leading up to the disciplinary hearing, but every notice alleged professional misconduct, as contemplated by s. 35(1)(a) of the *RESA,* by Ms. Wang in relation to the $50,000 loan to Ms. Li to fund part of the deposit required for the transaction. The notice alleged that Ms. Wang failed to avoid a conflict of interest as required by R. 30(i) of the *Rules* by providing funds to her client to assist with payment for a transaction on which she acted as agent and failed to advise her client of that conflict as required by R. 30(j) of the *Rules*. However, up until the fifth and final notice, served just days before the hearing in January 2023, it was alleged that the loan was made for the Vancouver Property, not the Richmond Property. Despite the error in property listed, the allegations, in substance, remained the same from the first to the fifth notice.

[28] Over this period, the BCFSA and Ms. Wang engaged in a number of without prejudice discussions where BCFSA staff attempted to have Ms. Wang agree to a finding of misconduct based on an agreed statement of facts drafted by the BCFSA. In the discipline hearing, Ms. Wang explained that she found this process to be unfair and felt she was being pressured to agree to things that were incorrect.

[29] The discipline hearing commenced on January 25, 2023, before Hearing Officer, Andrew Pendray, a delegate of the Superintendent. The Hearing Officer

made opening remarks and explained the process, including that Ms. Wang would have the opportunity to cross-examine the BCFSA's witnesses and to make final submissions. The Hearing Officer assisted Ms. Wang throughout the hearing when she asked a question or indicated uncertainty regarding the procedure.

[30] Counsel for the BCFSA, Ms. Davies, gave her opening remarks. Ms. Davies advised that Ms. Li, the complainant, would not be testifying as a witness because after 2020, the BCFSA had been unable to locate Ms. Li. Ms. Davies' first witness was Ms. Law, the BCFSA investigator assigned to Ms. Wang's case in December 2021. Ms. Law mostly gave evidence on documents in the investigation file gathered by the former investigator, Ms. Murray. Ms. Wang proceeded to cross-examine Ms. Law.

[31] During Ms. Wang's cross-examination of Ms. Law, it became clear that Ms. Wang had prepared using the fourth amended notice that referred to the Vancouver Property rather than the fifth notice, which had been amended two days before the hearing to refer to the Richmond Property. The Hearing Officer granted Ms. Wang an adjournment on the basis that she received the amended notice less than 21 days prior to the hearing as mandated by s. 40 of the *RESA*. The Hearing Officer re-set the hearing for February 27– 28, 2023.

Adjournment Applications

[32] In the intervening period before the hearing recommenced, Ms. Wang brought two adjournment applications of the discipline hearing. The first, because Ms. Wang had a client from out of town who needed to be shown properties. The second, due to a stated intention to request legal advice.

[33] The Hearing Officer issued decisions denying both adjournment applications, indexed at *Wang (Re)*, 2023 BCSRE 7 and *Wang (Re)*, 2023 BCSRE 8, respectively. In the first, the Hearing Officer concluded that Ms. Wang's client's request to have her show them properties did not warrant an adjournment. In the second, the Hearing Officer found that Ms. Wang's sudden intention to seek legal

advice while she had "long been aware" of the allegations did not constitute an appropriate ground for granting an adjournment.

Hearing Recommences

[34] The hearing recommenced on February 27, 2023. The Hearing Officer again made opening remarks regarding the process. Ms. Wang declined to further cross-examine Ms. Law.

[35] Mr. Heller, the Managing Broker at Ms. Wang's real estate firm, testified next. Mr. Heller testified that he had met with Ms. Li and Mr. Xu regarding the commission rebate, he detailed a WhatsApp conversation Mr. Xu sent to him between Ms. Wang and Ms. Li regarding the commission rebate, and he reviewed an email from Mr. Xu purporting to explain what took place.

[36] After counsel for BCSFA closed its case, the Hearing Officer explained that it was Ms. Wang's turn to present evidence and asked if she wished to testify. It is apparent from the transcript that Ms. Wang was unfamiliar with the procedures and was uncertain how to proceed. Ms. Wang reiterated that English was not her first language. Ms. Wang began to read from prepared submissions which included both evidence and arguments on the merits of the case. The Hearing Officer interjected on several occasions to explain the difference between presenting evidence and making submissions, instructing that the latter would be done after the evidence was presented. After the Hearing Officer repeated this explanation, Ms. Wang appeared to understand that she was to focus on the portion of her submissions that described the factual background.

[37] Ms. Wang's evidence and submissions are summarized at para. 66 of the Panel Chair's Decision. The Panel Chair summarized her evidence as follows:

> [67] …
>
> a) Ms. Wang claimed Ms. Li had a "special purpose" for borrowing money and that the special purpose Ms. Li had was to secure a commission rebate.
>
> b) Ms. Wang said that Ms. Li took advantage of eight years of close friendship and trust to exercise undue influence on her.

> c) Ms. Li asked to borrow the money only after her unconditional offer on the Richmond Property was accepted.
>
> …
>
> e) Ms. Wang said that there was no loan agreement or lending agreement with Ms. Li, either verbal nor in writing, which specified the amount of money borrowed or any interest or repayment terms.
>
> …
>
> g) Ms. Wang pointed out that Ms. Li returned the money back to her on June 29, 2016, as per her request before the completion date on the Richmond Property in October 2016. Ms. Wang had no intention to put her own interest on the title upon completion date.
>
> h) Ms. Wang also notes that Ms. Li did not complain to anyone about the loan towards the deposit of the Richmond Property.
>
> i) Ms. Wang pointed out that in the BCFSA's book of documents there was no evidence that Ms. Li had formally complained at all about the $50,000 loan towards the deposit of the Richmond Property.
>
> …
>
> [67] Ms. Wang testified that the provision of the $50,000 was not related to the receipt of commission. …

[38] During cross-examination, Ms. Wang confirmed she gave Ms. Li the $50,000, who later returned it to her. There was nothing in writing. Ms. Wang admitted she did not disclose to Ms. Li that there may have been a conflict of interest but, again, reiterated that she did not think there was one because this was not a potential transaction, and she did not seek to induce Ms. Li to purchase the property with the $50,000. Ms. Wang did not consider the $50,000 to be a loan as there was no interest on this transaction and Ms. Li had asked for the loan for a "special purpose". Ms. Wang admitted she made commission from the transaction but denied her provision of the $50,000 was connected to the commission.

[39] Ms. Davies put the receipt of funds record in relation to the Richmond Property to Ms. Wang, showing the $50,000 sent by bank draft from the Wang Corp. bank account on June 11, 2016. The receipt noted, "Other details concerning receipt of funds: loaning to the buyer temporarily". Ms. Wang acknowledged she wrote "loaning to the buyer temporarily" but stated that at the time she did not believe she was providing a loan, that she had used the word "loan" incorrectly, and subsequently understood it to have a different meaning.

[40] Additionally, Ms. Davies read into the record the translated copy of the WeChat messages between Ms. Wang and Ms. Li on June 27, 2016, where Ms. Wang asked Ms. Li to return the $50,000 and Ms. Li requested the 55% commission rebate, to which Ms. Wang agreed. Ms. Wang did not dispute the accuracy of these messages. Ms. Wang contended that this was the first time Ms. Li had requested the commission rebate and that she agreed to provide the rebate under duress.

[41] In her closing argument, Ms. Wang advanced several arguments which can be summarized as follows:

a) There was no conflict of interest because the BCFSA defines a conflict of interest as arising when a loan is provided to a client for a potential transaction and there is a “formal contract” spelling out the details of the loan. Here, there was no loan because there was no loan agreement, verbal or written. The definition of “loan” in the Oxford dictionary identifies a debt as an agreed sum that is due under the terms of a contract. Additionally, it was not a loan because no interest was charged. Further, the transaction was no longer “potential” because at the point Ms. Li requested the $50,000, the contract was fully binding.

b) Ms. Wang had no financial interest involved in the transaction because the provision of the $50,000 was not related to the receipt of a commission.

c) The money could be considered a gift because there was no loan agreement.

d) The BCFSA presented insufficient evidence. Mr. Heller was not a reliable witness. Further, Ms. Li had not been in contact with the BCFSA since 2020 and was unable to testify at the hearing.

e) Ms. Li unduly influenced Ms. Wang and intended to “cheat her”.

f) "Following the order of law", it would be fair and just to dismiss the complaint.

[42] The Hearing Officer ultimately found that Ms. Wang/Wang Corp. had engaged in professional misconduct and in his Sanction Decision ordered Ms. Wang/Wang Corp. to pay an administrative penalty, enforcement expenses, and complete educational training.

STANDARD OF REVIEW

[43] The FST benefits from a privative clause in s. 242.3 of the *FIA,* incorporating the standards of review codified in s. 58 of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45 [*ATA*]. Accordingly, in reviewing the decision of the Panel Chair, I am to apply the following standard of review set out in s. 58(2) of the *ATA:*

> (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
>
> (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
>
> (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

[44] Under s. 58(3) of the *ATA*, a discretionary decision will be patently unreasonable if the discretion is:

> (a) is exercised arbitrarily or in bad faith,
>
> (b) is exercised for an improper purpose,
>
> (c) is based entirely or predominantly on irrelevant factors, or
>
> (d) fails to take statutory requirements into account.

[45] I must, however, also have regard to the standard the Panel Chair applied in her review of the Hearing Officer's Decision. Applying the reasoning in *TruNorth Warranty Plans of North America, LLC v. Superintendent of Financial Institutions,* 2020 BCFST 2 [*TruNorth*], the Panel Chair concluded that on questions of law, the standard of correctness applied such that she was not required to afford deference

to the Hearing Officer's conclusions on pure legal questions. On questions of mixed fact and law, she instructed herself to apply the more deferential standard of reasonableness as guided by the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 [*Vavilov*]. With respect to matters of procedural fairness, she directed herself to consider fairness in the context of the statutory and administrative framework and to consider whether, in all of the circumstances, the Hearing Officer acted fairly.

[46] A question arises on this judicial review as to whether the approach to standard of review taken in *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board,* 2022 BCCA 10 [*Dawson*], applies to a review of a FST decision. In *Dawson*, a five-member panel of the Court of Appeal held that when a court is reviewing the decision of an independent body that itself has reviewed the decision of a statutory decision-maker on the deferential standard of reasonableness, it need not attempt the mental gymnastics of considering whether the reviewing body was patently unreasonable in concluding that the original decision was unreasonable. Rather, the court can take a shortcut and simply ask whether the original decision was reasonable. As the Court of Appeal explained, this is because the concept of reasonableness in the context of a judicial review is binary; a decision is either reasonable or it is not, and the conclusion of a review body that a reasonable decision is unreasonable is, itself, patently unreasonable: *Dawson* at paras. 173, 179, 181.

[47] Counsel for the FST submit that the *FIA* framework lacks an equivalent to s. 50.6(5) of the *Health Professions Act,* R.S.B.C. 1996, c. 183*,* at issue in *Dawson*. That provision expressly provides that the review board must extend deference to the College of Physicians and Surgeons disposition respecting the complaint on a reasonableness standard. In contrast, the *FIA* does not prescribe a particular standard of review to govern appeals. Only one decision was drawn to my attention in which this Court has, post-*Dawson,* applied the patently unreasonable standard to the review of an FST decision: *Laity v. British Columbia (Financial Services Tribunal),* 2023 BCSC 1165 at para. 39. However, the impact of *Dawson* was not

argued in that case, likely due, in large part, to the fact that the petitioner was self-represented.

[48] In my view, *Dawson* applies to the aspects of the Hearing Officer's Decision that the Panel Chair was required to review on a standard of reasonableness, allowing me to bypass any review of those aspects of the Panel Chair's Decision. As the Court of Appeal held in *Dawson,* my task, as the reviewing court, is to examine the statutory scheme and, in particular, the standards of review that the FST is mandated to apply to determine where the focus of deference ought to lie: *Dawson* at para. 171. The Panel Chair, in applying the reasoning in *TruNorth,* appropriately recognized that the focus of deference was on the Hearing Officer's findings of mixed fact and law based on his assessment of the evidence.

[49] In *TruNorth,* the FST examined the statutory scheme in detail and held that the FST should apply the more deferential standard of reasonableness where it is reviewing findings of fact: *TruNorth* at para. 64, adopting the reasoning in *Hensel v. Registrar of Mortgage Brokers,* Decision No. 2016-MBA-001(a). In *Hensel,* the FST observed that it hears appeals based on the record below in contrast to its predecessor, the Commercial Appeals Commission, that conducted hearings based on fresh evidence. As a result, for the same reasons that appellate courts grant deference to the findings of trial judges based on the record, the FST properly accords deference to the Hearing Officer where the appeal is centred on evidentiary findings and related assessments.

[50] As to the FST's findings relating to procedural fairness, the Superintendent submits that the shortcut reasoning in *Dawson* is equally applicable because like reasonableness, fairness is a binary concept: either the process was fair, or it was not. The FST did not engage with this argument in its written submissions.

[51] I am not persuaded that applying the *Dawson* shortcut reasoning to the judicial review of questions of procedural fairness is entirely apt. The standard articulated in s. 58(2)(b) of the *ATA* is to determine whether in all of the circumstances the tribunal under review acted fairly. On this issue, the Panel Chair owed no deference to the Hearing Officer: see *Seaspan Ferries Corporation v.*

British Columbia Ferry Services Inc., 2013 BCCA 55 at para. 52; *Robertson v. British Columbia (Teachers Act Commissioner),* 2014 BCCA 331 at para. 63. This is consistent with the correctness standard developed at common law for the review of matters relating to procedural fairness and abuse of process: *Mission Institution v. Khela*, 2014 SCC 24 at para. 79; *Law Society of Saskatchewan v. Abrametz,* 2022 SCC 29 [*Abrametz*] at para. 30. Accordingly, if I conclude the Panel Chair was wrong to find a breach of procedural fairness, I owe no deference to this finding. While the result may be the same, that I must focus on the initial hearing to assess whether it was fair, it is because no deference is owed to the Panel Chair's assessment in this regard. In contrast, the shortcut described in *Dawson* is appropriate where a reviewing body has found a reasonable decision to be unreasonable and, in so doing, has failed to accord the deference inherent in a reasonableness review mandated by the statutory regime.

[52] As will become apparent from my review of the Panel Chair's Decision below, her reasons do not deal with the reasonableness of the Hearing Officer's Decision in isolation from questions of whether the process before the Hearing Officer and his decision were procedurally unfair. There is considerable overlap in her reasoning in respect of reasonableness and procedural fairness. Notwithstanding that overlap, due to the bypass permitted by the *Dawson* shortcut, it has been necessary for me to parse out those portions of the Panel Chair's Decision dealing with procedural fairness in order to review those findings.

ISSUES

[53] This judicial review raises the following issues:

a) What is the standing of the Superintendent and the FST to participate in this review?

b) Was the Hearing Officer's Decision reasonable?

c) Can the Panel Chair's finding of procedural fairness be maintained?

d) Did the Panel Chair exceed its authority in staying the disciplinary proceedings against Ms. Wang?

e) What is the appropriate remedy to be granted by this Court?

ANALYSIS

Standing

[54] The question of standing relates to whether each of the institutional parties in this judicial review properly adhered to their role.

[55] With respect to the FST, as this judicial review involves its own decision, a question arises regarding the extent to which the FST can participate. When the decision of a tribunal is under judicial review, the tribunal's role in making submissions is traditionally limited to assisting the court to understand the nature of the legislative regime, the record of the proceedings, the decision under review, and the appropriate standard of review. However, as the Supreme Court of Canada held in *Ontario (Energy Board) v. Ontario Power Generation Inc.,* 2015 SCC 44 at paras. 41–62, there are some circumstances where a reviewing court should exercise its discretion to allow the tribunal to go beyond its traditional role and provide submissions going to the merits of the review. In doing so, the following factors set out at para. 59 of *Ontario (Energy Board)* should be considered:

> (1) If an appeal or review were to be otherwise unopposed, a reviewing court may benefit by exercising its discretion to grant tribunal standing.
>
> (2) If there are other parties available to oppose an appeal or review, and those parties have the necessary knowledge and expertise to fully make and respond to arguments on appeal or review, tribunal standing may be less important in ensuring just outcomes.
>
> (3) Whether the tribunal adjudicates individual conflicts between two adversarial parties, or whether it instead serves a policy-making, regulatory or investigative role, or acts on behalf of the public interest, bears on the degree to which impartiality concerns are raised. Such concerns may weigh more heavily where the tribunal served an adjudicatory function in the proceeding that is the subject of the appeal, while a proceeding in which the tribunal adopts a more regulatory role may not raise such concerns.

[56] Regarding the first two factors, the FST submits the Court should grant the FST an expanded role because Ms. Wang represented herself and if the Court were

to rely solely upon her submissions regarding the merits, this may result in an unbalanced perspective of the merits: *Ontario (Energy Board)* at para. 54.

[57] With respect to the final factor, the FST submits that while it is an adjudicative tribunal, this is an appropriate case to balance the importance of maintaining tribunal impartiality with the need for fully informed adjudication: *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.,* 2023 BCCA 168 at para. 49 [*Gibraltar*]. As the Court of Appeal held in *Gibraltar,* "[w]here there is no other respondent able and willing to defend the merits of an administrative decision, the need to facilitate fully-informed adjudication will generally be the more important of the two competing values." Although Ms. Wang provided submissions defending the findings of the Panel Chair, I am satisfied that the submissions of the FST, on the merits of the decision and in response to the Superintendent's submissions, are necessary to ensure that I have a complete picture of proceedings under review. Further, counsel for the FST scrupulously maintained the appropriate boundaries and expected tone as outlined in *Ontario (Energy Board)* at paras. 68–71 in making submissions.

[58] I turn now to the role of the Superintendent in this judicial review. The Superintendent submits that any issue with respect to its standing is resolved by the BCFSA's separation between the Superintendent's prosecutorial arm that initiates disciplinary proceedings against real estate agents, and the delegate that makes the decisions in respect of those proceedings. The Superintendent submits that it initiated this judicial review in its prosecutorial capacity. The Hearing Officer described this separation in the Sanction Decision in response to concerns raised by Ms. Wang that he was in a conflict of interest because he was employed by the BCFSA at para. 23:

> - the prosecution and adjudication functions are separate and housed within different teams at BCFSA. The prosecution staff do not overlap with the adjudicators. The Chief Hearing Officer reports directly to the Vice President, Legal, whereas investigation staff and legal counsel responsible for prosecuting disciplinary matters are within the Compliance & Enforcement team under the Vice President, Compliance & Enforcement;

> • Hearing Officers do not have access to investigation or prosecution information or records, other than those submitted by the parties during a hearing or in pre-hearing submissions;
>
> • Hearing Officers are free to make their own decision based upon the record and submissions of the parties in any given case. Their decisions are made without the influence of any managers or executives at BCFSA, and the Hearing Officers are not influenced or incentivized to arrive at any particular outcome on a decision or type of case; and
>
> • Hearing Officer remuneration is not tied to the outcome of the matters on which they adjudicate.

[59] From my review of the record, I am satisfied that in initiating the disciplinary proceedings, the Superintendent adhered to the separation described above. The Superintendent's participation in this judicial review in its prosecutorial capacity, as separated from its decision-making function, does not engage the fundamental policy considerations underlying the boundaries placed on a tribunal participating in a judicial review of its decision-making capacity: *Ontario (Energy Board)* at para. 52–57.

[60] Even accepting this separation, the FST submits that the principles of *Ontario (Energy Board)* still apply to the Superintendent in that it must, in making its submissions, avoid supplementing what would otherwise be a deficient decision with new arguments on this judicial review; otherwise known as "bootstrapping". In keeping with the "reasons first" approach outlined in *Vavilov,* the FST submits the Court should remain focused on whether the reasons provided by the Hearing Officer stand on their own from a reasonableness point of view. I agree and find the Superintendent's submissions consistent with this approach.

Was the Hearing Officer's Decision Reasonable?

[61] When the court conducts a reasonableness review, it must remain firmly focused on the actual outcome reached by the administrative decision-maker and ask itself whether that decision, as a whole, is transparent, intelligible, and justified: *Vavilov* at para. 15. The role of the court is to assess the decision under review rather than to consider what decision it would have arrived at had the court been tasked with deciding the matter: *Vavilov* at para. 83. This is in keeping with the

legislature's intent to assign responsibility for certain decisions to administrative decision-makers: *Mason v. Canada (Citizenship and Immigration),* 2023 SCC 21 at para. 57. As a result, the reasons provided for the decision are the principle focus of the reviewing court, and respectful attention must be paid to those reasons with the aim of understanding the decision-maker's reasoning process: *Vavilov* at para. 84.

[62] A reasonable decision is one "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para. 85. Reasons, however, are not required to meet a standard of perfection. Reasons that fail to reference all arguments advanced, statutory provisions or relevant case law cannot be set aside on that basis alone. Any review must consider reasons holistically while keeping in mind the record before the decision-maker as well as the institutional context and the history of the proceedings in which the decision was made: *Vavilov* at para. 91; *Mason* at para. 61.

[63] While perfection is not required, the reasons are how the decision-maker communicates the rationale for his or her decision, and the judicial review is intended to be a robust form of review aimed at assessing whether the decision is "justified in relation to the constellation of law and facts that are relevant to the decision": *Vavilov* at paras. 13, 105.

[64] As helpfully summarized by the Supreme Court of Canada in *Mason:*

> [64] *Vavilov* identified two types of "fundamental flaws" indicating that an administrative decision is unreasonable: (1) a failure of rationality internal to the reasoning process; or (2) a failure of justification given the legal and factual constraints bearing on the decision (para. 101). A reviewing court need not categorize unreasonableness as falling into one category or another. They are simply a helpful way of describing how a decision may be unreasonable (para. 101).

[65] In conducting reasonableness review, unless there are exceptional circumstances, the reviewing court defers to the findings of fact made by the administrative decision-maker. It is only when the finding is not "justified in light of the facts" or the decision-maker "fundamentally misapprehended or failed to account

for the evidence before it" that the reasonableness of the decision may be jeopardized: *Vavilov* at paras. 125–126.

[66] Ms. Wang raises numerous concerns regarding the Hearing Officer's Decision and the process leading to it. Several of these concerns are overlapping and duplicative. The key concerns Ms. Wang raised that are material to my assessment of the reasonableness of the Hearing Officer's Decision can be distilled as follows:

a) The evidence submitted by the BCFSA at the hearing was not sufficiently clear and cogent to satisfy its burden to prove that the $50,000 was a legal loan and that it constituted a conflict of interest.

b) The Hearing Officer relied on double hearsay evidence in arriving at his decision.

c) The Hearing Officer ignored Ms. Wang's evidence regarding the nature of the $50,000 payment and the terms of the real estate contract which showed that there was a completed sale prior to when Ms. Wang provided the $50,000 to Ms. Li, which contradicted the Hearing Officer's finding that the loan constituted a conflict of interest.

d) The Hearing Officer ignored the evidence of Mr. Heller, Ms. Wang's managing real estate broker.

[67] Although the FST focused its submissions on the merits of the FST Decision, it emphasized that this judicial review is not about whether Ms. Wang loaned money to her client. The conclusion of the Hearing Officer, that the $50,000 Ms. Wang provided to her client was a loan, was accepted as reasonable by the Panel Chair. The FST submits that the issue on this judicial review is whether it was reasonable for the Hearing Officer to conclude that the loan inevitably gave rise to a conflict of interest. The FST identifies this aspect of the Hearing Officer's Decision as lacking intelligibility and transparency because his reasons fail to engage with the arguments put forward by Ms. Wang.

[68] While the FST concedes the reasonableness of the Hearing Officer's first conclusion regarding the loan, Ms. Wang continues to take issue with that aspect of the decision. Therefore, I begin with my assessment of this finding.

[69] As is demonstrated by the following paragraphs of the Hearing Officer's reasons, he coherently sets out the factual evidence supporting his conclusion that the $50,000 was a loan:

> 67. I find that the evidence and information before me supports a conclusion that the $50,000 Ms. Wang provided towards the deposit on the purchase of the Blundell Property was a loan.
>
> 68. Ms. Wang specifically indicated in her February 14, 2018 email to the RECBC investigator that she had obtained, on June 11, 2016, a bank draft in the amount of $50,000 for the deposit on the Blundell Property. Ms. Wang attached a copy of that June 11, 2016 bank draft from her business account to her February 14, 2018 email.
>
> 69. I note that Ms. Wang also provided the RECBC investigator with a copy of her business bank account statement showing a wire transfer into that account in the amount of $49,982.50, which Ms. Wang explained was the repayment of the $50,000 by the client, minus a processing fee. Ms. Wang further explained that the client had also subsequently reimbursed the processing fee.
>
> 70. Given the above facts, I do not consider that there can be any doubt that Ms. Wang provided the sum of $50,000 as payment towards the $90,000 total deposit on the Blundell Property. Nor do I consider there can be any doubt that Ms. Wang was repaid that $50,000 by the client on June 29, 2016.

[70] The Hearing Officer also relied upon the receipt of funds document prepared by Ms. Wang that describes the deposit funds as being "loaned to the buyer temporarily." In his view, this was the most compelling evidence as to what "Ms. Wang's view of the transaction was, and, in fact what the nature of the transaction was." In addition, the Hearing Officer found that Ms. Wang's WeChat request to the client for repayment of the funds made the status of the transaction as a loan, clear.

[71] In the course of concluding that the $50,000 was a loan, the Hearing Officer engaged with Ms. Wang's submission that the money was not a loan because no interest was charged, there was no written agreement, and her provision of the money to the clients was akin to loaning a friend your car. The Hearing Officer rejected these submissions and, in my view, was justified in preferring the contemporaneous documentary evidence from 2016 as more indicative of the true nature of the transaction than Ms. Wang's testimony given many years after the transaction.

[72] The Hearing Officer also engaged with Ms. Wang's submissions that the BCFSA Investigator was not reliable because she did not have knowledge of the original book of documents and because she was not the original investigator. The Hearing Officer considered this argument but concluded that Ms. Wang failed to cast any doubt on the documentary evidence on which he relied to find that the transaction was a loan.

[73] Contrary to Ms. Wang's submissions, the reasons do not indicate that the Hearing Officer relied on any hearsay evidence in concluding either that the transaction was a loan or that it constituted a conflict of interest. The Hearing Officer relied on evidence from Ms. Wang herself and contemporaneous documents. The information obtained by the investigator from Ms. Li and Mr. Xu is only referred to in the sense that it corroborates the evidence from Ms. Wang.

[74] Ms. Wang's argument that the Hearing Officer relied on double hearsay appears to be informed by the Panel Chair's criticism that the Hearing Officer relied on hearsay evidence from Ms. Wang's clients, who did not testify at the hearing, without explanation or an assessment of its reliability. The Panel Chair acknowledged that the Hearing Officer was not bound by court rules of evidence and that he had discretion to admit hearsay evidence. Her criticism was that he failed to properly assess the reliability of that evidence, did not consider whether it was fair to rely upon, and did not set out in his decision why he relied on hearsay. The Panel Chair then found as follows:

> [135] Although it is not always clear from the reasons what evidence the Delegate relied on for which of his findings, there were a number of instances where the Delegate made findings that appear to have been based largely or exclusively on hearsay or double hearsay evidence. For example, the Delegate appears to have accepted hearsay evidence attributed to Mr. Xu, notwithstanding that no investigator spoke with Mr. Xu and that his comments in writing were never further tested nor explained. In addition, the remarks attributed to Mr. Xu often were contradictory to Ms. Wang's sworn oral evidence.

[75] The Superintendent submits that this finding by the Panel Chair is a fundamental misapprehension of the Hearing Officer's Decision. I agree. Contrary to

the reasons first approach mandated by *Vavilov,* the Panel Chair inexplicably reads into the Hearing Officer's Decision that he relied on hearsay evidence from either Ms. Li or Mr. Xu to support his conclusions, when a careful review of his reasons demonstrates that very little, if any, weight was placed on this evidence.

[76] The Hearing Officer accepted Ms. Wang's evidence that she was willing to provide the $50,000, at least in part, based on her relationship with the client. However, in his view, this did not change the nature of the transaction as a loan.

[77] Paying careful attention to the reasons, one can clearly follow the Hearing Officer's rationale for the finding that the transaction was a loan; the evidence relied upon is entirely consistent with and justifies this finding of fact.

[78] Having found that the transaction was a loan, the Hearing Officer went on to find that it was "more likely than not that Ms. Wang provided the $50,000 with a view to ensuring that she receive her commission upon the completion of the purchase." The Hearing Officer reached this conclusion based on a letter Ms. Wang had forwarded to the BCFSA investigator stating that the client had asked Ms. Wang for the $50,000 as she did not have enough money to pay the deposit. Therefore, the Hearing Officer reasonably inferred that absent the $50,000 deposit, the purchase would not have proceeded, and Ms. Wang would not have received a commission.

[79] I now turn to the Hearing Officer's assessment of the evidence regarding the reasons for the loan and his conclusion that the loan amounted to a conflict of interest. It is this aspect of the decision that the FST submits is lacking a logical path between the Hearing Officer's finding of facts and his conclusion. Ms. Wang submits that the Hearing Officer ignored both the terms of the contract and her submissions that there was no conflict of interest.

[80] The Hearing Officer's reasons that the loan amounted to a conflict of interest are set out in the following paragraphs:

> 87. BCFSA submits that Ms. Wang ought to have realized that providing the $50,000 loan to the client created a conflict of interest in the purchase of [Property 1]. BCFSA points to an October/November 2015 RECBC

newsletter, which was sent by email to all licensees, as accurately specifically describing why the provision of a loan to a client ought to be avoided:

> Most trading services licensees would probably agree that helping clients to buy their "dream home" is one of the most satisfying parts of the job. So when problems arise on the way to completing the transaction, it can be tempting to want to step in and fix things for your clients, to help them get the property they want so badly. But before you leap in and problem solve for your clients, take a moment to think about whether your assistance may actually be putting you in a conflict of interest.
>
> One common example of helpful, problem-solving behavior that can have serious consequences for licensees is lending money to a client. … You mean well, and your clients are delighted. But take a closer look.
>
> Although on the surface this may seem like a kindly action, in reality the loan you've offered your clients is a self-serving business arrangement. By lending money to your clients, you've ensured that the sale will complete and you'll earn your commission. You've also created a financial obligation for your buyer-client, who must now repay their debt to you. In other words, you've just placed yourself in a conflict of interest.

88. Ms. Wang does not agree that the provision of the $50,000 loan to the client created a conflict of interest. Rather, she takes the position that once the offer had been accepted, the transaction had, in effect, completed. Ms. Wang noted that she only provided the loan after the contract to purchase [Property 1] was made, and submitted that if the client had not paid the deposit as required by that contract, the client would have been in breach of contract. In summary, Ms. Wang's position was that even if she had not loaned the client the $50,000, the contract of purchase and sale on [Property 1] would have completed in any event, and that there was therefore no conflict of interest created by that loan.

89. I do not agree with Ms. Wang's submission in this respect.

90. In my view, the reason that Ms. Wang provided the $50,000 loan to the client was to ensure that the purchase of [Property 1] went forward. The client indicated in an email to RECBC that it did not have the funds available to complete the deposit payment at the time it was due, and Ms. Wang's own evidence was that the client had indicated to Ms. Wang that she needed to borrow the $50,000 as she did not have the money available to complete the deposit payment as required.

91. While I acknowledge that Ms. Wang's evidence is that she feels that the client tricked her, and that the client did in fact have sufficient funds available to complete the payment of the deposit, I consider the evidence to show that at the time she provided the loan of $50,000 to the client, Ms. Wang did so in order to ensure that the deposit required by the purchase agreement for [Property 1] was paid and the purchase could proceed.

92. I consider that even if I were to accept that Ms. Wang's main reason for providing the loan was not to ensure that the purchase of [Property 1]

proceeded, such that she would receive her commission associated with that purchase, but rather was to simply help out an individual she considered a friend, the reality of the situation is that once Ms. Wang's own money became part of the transaction for the purchase of [Property 1], she had a personal financial interest in the transaction beyond that which a licensee would normally have. I agree with BCFSA's submission that:

> When a licensee makes a loan to a client, a conflict of interest arises because the licensee introduces their own interest into the transaction and cannot maintain their loyalty of fulfilment of agency duties owed to a client. For example, in a situation where a licensee loans funds towards the deposit or the purchase price or a property, a risk of the licensee being adverse in interest to their own client can arise should the transaction not complete for any reason. This could have occurred in the present case.

93. I find further support for my conclusion that the provision of the $50,000 loan created a conflict of interest in the decision of RECBC in *Re Kim* 2019 CanLII 106127 (BC REC). In *Kim*, the licensee offered to loan his clients a shortfall in funds required in order to purchase a property as a means of enticing the clients to make an offer in excess of their budget. The clients relied on that loan offer from the licensee to make an offer on a property as a result. In finding that the offer of the loan created a conflict of interest the RECBC panel held that in making the offer to lend money to the clients in relation to the purchase of a property, Kim had created a conflict of interest:

> [45]…For example, by offering to lend money to the Clients and become their creditor, he could not impartially carry out his duty to advise them about the benefits and risks of the loan terms, or the absence of loan terms. Further, a loan would favour the Respondent's personal financial interests, as he would receive remuneration through interest on loan money, and increase his commission upon the Clients buying a more expensive property than their original budget allowed. He did not advise the Clients of the conflict, and failed to advise them to obtain independent legal advice before acting on the offer. Second, in knowing that the Clients were continuing to rely on his offer in relation to the Princeton Property, and by failing to tell them he was not loaning them money, he was effectively representing to the Clients that he was offering to lend money in relation to the Princeton Property. He only declined to loan money after the Clients agreed to the list price counter-offer. Regardless of whether the Respondent's offer of a loan was an enforceable contract or not, relating to the Princeton Property, the Respondent misled the Clients, through his silence, about them having financing for a purchase over $1.2 million. His making the offer in relation to the Princeton Property contravenes Rule 3-3(i) [take reasonable steps to avoid a conflict of interest], and Rule 3-3(j) [promptly and fully disclose conflicts of interest to the client].

94. Although the circumstances in Ms. Wang's case are not identical to those in *Kim*, in that there is no evidence to suggest that Ms. Wang intended to earn interest on the loan to the client, as I have stated above, I consider it to be clear that in providing the loan Ms. Wang was working to ensure that

> the [Property 1] purchase would complete, which would ensure that she received a commission. In my view, that fact alone created a conflict of interest.

[81] In my view, these reasons follow a rational chain of analysis and are internally coherent. The conclusion is justified when viewed in relation to the terms of the standard form contract of purchase and sale, Ms. Wang's evidence as to why the funds were advanced, the previous Real Estate Council decision in *Kim*(*Re),* 2019 CanLII 106127 (B.C.R.E.C.), and the guidance issued to licensees warning against making loans to clients due to conflict of interest concerns. These reasons make it clear that the conflict of interest finding arose because Ms. Wang loaned money to her clients to ensure that the purchase would complete, which would then ensure her receipt of the commission. Ms. Wang inserted herself into the transaction by advancing her own funds. In so doing, she acted contrary to BCFSA guidance that when a licensee loans money to a client for use in a real estate transaction, he or she places themselves in a conflict of interest. This conclusion was also supported by the decision of the Real Estate Council of British Columbia in *Kim (Re)*.

[82] Ms. Wang submits that the Hearing Officer ignored the terms of the real estate contract that, in her submission, showed the sale of the Richmond Property had completed before Ms. Wang advanced the $50,000 loan to the client. Respectfully, this argument is difficult to comprehend as it fails to account for the ability of the seller to terminate the contract when the buyer fails to pay the required deposit. The Hearing Officer directly engaged with this argument and reasonably concluded that Ms. Wang loaned the $50,000 to ensure that the purchase of the property went forward. I am unable to conclude that the Hearing Officer misinterpreted the terms of the contract in doing so.

[83] Ms. Wang also submits that the Hearing Officer ignored the evidence of Mr. Heller that Ms. Li and Mr. Xu at no time mentioned the $50,000 loan to him. From my review of the transcript, Mr. Heller did not hear about the loan from Ms. Wang's clients because they sought to meet with him about issues unrelated to the loan, namely their complaint regarding the commission rebate and Ms. Wang's

handling of rent cheques from the acquired property. Significantly, Mr. Heller testified as follows:

> Q All right, did Ms. Wang ever come to you about being involved in the deposit of this transaction?
>
> A Never.
>
> Q She didn't ask you before she did it?
>
> A (Inaudible) I have no recollection of this. Actually, I have no knowledge of it, sorry, not recollection, I have no knowledge of this whatsoever.
>
> Q You have no knowledge of it until this became -- until this issue with Ms. Li transpired?
>
> A Right, until the husband phoned, yes.
>
> Q So if she had, if she had come to you before arranging for this bank draft towards the deposit, what would you have told her, or advised her?
>
> A Absolutely not to do it.
>
> Q And why is that?
>
> A Well, a potential conflict of interest, a perceived conflict, it's -- it means that she is part of the transaction, there would have to be a disclosure in trade. It's not good practice whatsoever.
>
> Q Okay.
>
> A Even my realtors they say that the seller wants me to be a power of attorney for them, I do not recommend that either.

[84] The fact that Mr. Heller did not hear about the loan from Ms. Li and Mr. Xu does not advance Ms. Wang's arguments that her provision of the $50,000 was neither a loan nor a conflict of interest. As already discussed, there was ample evidence before the Hearing Officer, mostly originating from Ms. Wang herself, that the $50,000 was a loan. As to whether this constituted a conflict of interest, Mr. Heller clearly recognized the potential for a conflict of interest to arise, and his evidence supports, rather than detracts from, the Hearing Officer's finding of a conflict of interest. Ms. Wang had the opportunity to cross-examine Mr. Heller but failed to do so.

[85] Guided by the applicable principles, my review of the record of the proceedings and the reasons of the Hearing Officer, I find that the Hearing Officer's Decision that Ms. Wang made a loan of $50,000 to her clients, and that this

transaction put her in a conflict of interest, to be reasonable. The Hearing Officer's reasons rationally, transparently, and intelligibly explain the rationale for these conclusions.

[86] Given my conclusion that the Hearing Officer reasonably concluded that Ms. Wang was guilty of professional misconduct and applying the principles in *Dawson*, it was patently unreasonable for the Panel Chair to conclude that the Hearing Officer's Decision was unreasonable.

Did the Hearing Officer Accord Ms. Wang Procedural Fairness?

[87] I turn now to an assessment of the Panel Chair's conclusion that the Hearing Officer failed to accord procedural fairness to Ms. Wang. In reviewing the Panel Chair's findings of procedural fairness as isolated from those of reasonableness, I am not required to accord any deference to those findings.

Findings of the Panel Chair on Procedural Fairness

[88] The Panel Chair concluded that there were breaches of procedural fairness in two main respects.

[89] First, the Panel Chair found that the Hearing Officer's reliance on hearsay or double hearsay evidence impacted both the substantive reasonableness review and the question of procedural fairness.

[90] The Panel Chair held that Ms. Wang could not properly respond to the BCFSA's evidence against her because she was unable to test the evidence from the complainants, Ms. Li and Mr. Xu, or the original investigator, Ms. Murray, through cross-examination: see para. 141. The Panel Chair further found that:

> [141] … It is apparent that the lack of direct evidence contradictory to Ms. Wang's testimony did not lead to the Delegate's assessing the relative credibility of that evidence. It appears that facts were accepted by the Delegate based on hearsay and without analysis, notwithstanding the questionable provenance.

[91] Second, the Panel Chair found that the Hearing Officer's conclusion that Ms. Wang was motivated by the prospect of earning commission was procedurally

unfair because it was also based on the untested hearsay statements of Ms. Li and Mr. Xu, which directly contradicted Ms. Wang's direct evidence that she only provided the money because of her close friendship with Ms. Li.

[92] The Panel Chair reasoned that these two areas, in addition to her reasons on the unreasonable nature of the decision, were sufficient to conclude there was a lack of procedural fairness and ground her decision to allow the appeal.

[93] It is important to note that the Panel Chair was critical of certain actions by the Hearing Officer and counsel for the BCFSA leading up to and during the hearing, but ultimately, did not find any breach of procedural fairness based on those concerns: see Panel Chair Decision at paras. 23–30, 47–49, 54, 64, 69–77, 85, and 141. As I will discuss below, some of these critiques are unwarranted as they are contrary to what actually took place at the hearing.

Assessment of Procedural Fairness

FST Submissions

[94] The FST's submissions on procedural fairness are focused on the extent to which Ms. Wang was sufficiently able to respond to the case against her given that Ms. Li and Mr. Xu were never called to testify. Both Ms. Wang and the Panel Chair take issue with the fact that she was not given advance warning they would not be called and was unaware until the initial hearing that the investigator had never spoken directly to Ms. Li.

[95] I have already concluded that the Panel Chair's conclusion that the Hearing Officer improperly relied on hearsay evidence does not reflect a proper reading of the Hearing Officer's reasons which demonstrate that he placed little, if any, weight on the information from Ms. Li. and Mr. Xu.

[96] With respect to the use of hearsay evidence, the Panel Chair acknowledged the Hearing Officer was not bound by the rules of evidence and was entitled to rely on hearsay. Nevertheless, the Panel Chair found the Hearing Officer relied on hearsay without taking steps to assess its reliability. She found that in doing so, he

compromised the fairness of the process particularly when “the hearsay evidence is contradicted by direct, first-hand sworn, evidence”.

[97] In my view, in addition to misapprehending the degree to which the Hearing Officer actually relied on the hearsay evidence, the Panel Chair erred in dealing with this issue as a matter of procedural fairness. The Court of Appeal in *Ocean Port Hotel Ltd. v. British Columbia (The General Manager, Liquor Control and Licensing Branch),* 2002 BCCA 311 at para. 15, held that where an administrative tribunal is permitted to use hearsay evidence, how it uses that evidence goes to the reasonableness of that decision, as opposed to its fairness.

[98] With respect to the concern that Ms. Wang was not notified that Ms. Li would not be testifying until the first day of the hearing, I am unable to conclude that this created any unfairness. The FST submits that knowledge of who will be testifying directly impacts the right of a party to have a “meaningful opportunity to present their case”.

[99] As the Court of Appeal recently held in *R.R. v. Vancouver Aboriginal Child and Family Services Society,* 2025 BCCA 151 at para. 90, leave to appeal to SCC ref’d, 2025 CanLII 119087, “A decision can be set aside for procedural unfairness only if it results in obvious unfairness or actual prejudice to their right to be heard”. Neither the FST nor Ms. Wang articulated how Ms. Wang would have presented her case any differently had she been aware that Ms. Li would not be testifying. Ms. Wang learned that Ms. Li would not be testifying on the first day of the hearing before it was adjourned to allow Ms. Wang to review the amended notice. Therefore, she had time to adjust to the fact that Ms. Li would not be called and could have questioned the investigator about her failure to call Ms. Li. Ms. Wang also could have taken steps to call Ms. Li herself. In any event, given the limited role that the information from Ms. Li had in the Hearing Officer’s Decision, Ms. Wang was not subjected to any actual prejudice as a result of the failure to call Ms. Li.

Ms. Wang's Submissions

[100] I turn now to the concerns raised by Ms. Wang material to my review of the fairness of the proceeding before the Hearing Officer over and above those relating to the use of the hearsay evidence from Ms. Li and Mr. Xu. Her concerns can be summarized as follows:

a) The client, Ms. Li, did not file a complaint about any loan towards the property (see para. 14 submissions).

b) Counsel for the BCFSA engaged in various types of misconduct such as ignoring sworn evidence, pursuing false allegations, fabricating exhibits, and ignoring sworn evidence.

c) The Vancouver Property address, instead of the Richmond Property, was the subject of allegations included in the notice of discipline hearing until it was amended just 12 days prior to the hearing scheduled for January 25 and 26, 2023.

d) The Hearing Officer was biased because the Delegate of the Superintendent shares the same organizational structure, corporate cultures and working environment as the BCFSA discipline counsel, Superintendent CEO, and the investigator.

e) The Hearing Officer did not give her a meaningful opportunity to participate in the hearing by muting her and ignoring the messages she added to the remote hearing chat.

[101] I address each of these in turn. No procedural unfairness arises from the fact that Ms. Li's complaint to the BCFSA regarding the transaction was not about the loan Ms. Wang advanced. While Ms. Wang submits that the BCFSA should not have proceeded with the complaint because the client raised no issue with the provision of funds, she fails to identify how her procedural rights been jeopardized by the way this conduct came to be the subject of the disciplinary proceedings. Notwithstanding the incorrect reference to the Vancouver Property, from the first notice in 2019, Ms. Wang was on notice that the proceedings were to be focused on her provision of funds to her client. The BCFSA should be permitted to investigate misconduct it uncovers during an investigation even if that misconduct is not the subject of the original complaint. To find that this amounts to procedural unfairness would significantly obstruct the investigatory role of the BCFSA contrary to its mandate to protect the public.

[102] With respect to the allegations of misconduct made against the investigator, Ms. Wang advanced similar allegations in a civil claim against counsel for the BCFSA, Ms. Davies. In reasons indexed as *Wang v. Davies,* 2025 BCSC 596, Justice Hamilton dismissed these allegations as disclosing no reasonable prospect of success. In particular, Hamilton J. held:

> [53] Ms. Davies has provided detailed, credible affidavit evidence explaining that she made an inadvertent mistake with respect to the property description and she also made some minor inadvertent errors in her closing submissions at the discipline hearing. I have no difficulty accepting Ms. Davies' evidence that she conducted herself with candour, professionalism and honesty in doing her job.

[103] Moreover, Hamilton J. found the allegations made against Ms. Davies to be scandalous, frivolous, and vexatious and that "Ms. Wang has no difficulty throwing around serious allegations without any basis, without any apparent consideration to the effect this may have on Ms. Davies or her reputation.": at para. 55. In her submissions before me, Ms. Wang was unable to point to any part of the record which substantiated her very serious allegations against Ms. Davies. Based upon my review of Ms. Davies' conduct in the proceedings before the Hearing Officer, I am unable to conclude that her conduct gave rise to any procedural unfairness.

[104] With respect to the inclusion of the incorrect address and the late amendment to correct this error, no procedural unfairness arises from how the Hearing Officer dealt with this issue. Over the course of the four years from when the first notice was issued to the hearing date, Ms. Wang was engaged in discussions with the BCFSA regarding the complaint, and it is reasonable to believe that, despite the mistake on the notice, she fully understood the subject of the complaint was on the Richmond Property. In any event, it is not necessary for me to determine if the mistake in the notice impacted Ms. Wang's understanding of the complaint because any impact it may have had was remedied by the Hearing Officer granting Ms. Wang an adjournment, allowing Ms. Wang sufficient time to respond to the further amended complaint.

[105] As set out above, in his Sanction Decision, the Hearing Officer addressed Ms. Wang's concerns that he was biased due to his employment with the Superintendent by pointing out the steps that have been taken to maintain a separation between the investigative and prosecutorial arm of the Superintendent, and the hearing officers which perform the Superintendent's adjudicative role. While Ms. Wang repeats these submissions on this judicial review, they have no merit. The separation described by the Hearing Officer is sufficient to ensure that the adjudication of complaints made against realtors are carried out in a procedurally fair manner.

[106] Ms. Wang goes beyond her allegations of institutional bias to submit that the Hearing Officer was biased in how he conducted the hearing itself. From my review of the transcripts, there is no merit to Ms. Wang's suggestion that she was not afforded a meaningful opportunity to participate in the hearing. She alleges that on the first day of the hearing, the Hearing Officer turned off her speaker and ignored her messages in the chat function. From my review, there is no indication that Ms. Wang was ever muted. With respect to the chat function, the Hearing Officer at one point acknowledged that Ms. Wang had posted two questions in the chat during the examination of the BCFSA investigator. Before addressing the questions posed by Ms. Wang, the Hearing Officer advised her to ask questions aloud rather than using the chat function as it is his practice not to look at it during the hearing. Later during closing submissions, the Hearing Officer advised Ms. Wang that although she had put some points into the chat, she would need to read them aloud when it was her turn to make submissions, presumably so that these submissions would form part of the record.

[107] Contrary to the criticisms levelled by the Panel Chair as to how the Hearing Officer conducted the proceedings, the record demonstrates that the Hearing Officer took care throughout to ensure that Ms. Wang understood the process and could meaningfully participate. Some of the Panel Chair's criticisms are founded in a fundamental misreading of the record. For example, at para. 30 of the Panel Chair's Decision, she wrongly states that the Hearing Officer made no opening remarks to

explain the hearing process to Ms. Wang. To the contrary, the Hearing Officer noted that because Ms. Wang was representing herself, he would start with some background on how the hearing would proceed. He went on to outline that each side would be given the opportunity to present its case through witnesses and question the opposing side's witnesses. The Hearing Officer confirmed that Ms. Wang was not calling any witnesses besides herself and advised that she would need to testify and be cross-examined. He also explained the process for closing submissions. Additionally, the Hearing Officer made it clear that Ms. Wang was able to ask questions about the procedure throughout the hearing and encouraged her to do so. The Hearing Officer gave a similar summary after the hearing reconvened in February following the adjournment.

[108] The Hearing Officer also explained in plain language terms what was required of Ms. Wang when she testified. At the outset of Ms. Wang's testimony, it became apparent to the Hearing Officer that Ms. Wang was giving submissions rather than factual evidence. The Hearing Officer reminded Ms. Wang that, "what we want to hear right now from you is your view of the transaction and how it went, and you can defend that however you see fit … you want to focus on the alleged conflict of interest." After Ms. Wang began speaking, and it was clear she had again misunderstood and continued to read from her prepared submissions, the Hearing Officer patiently and respectfully intervened to re-direct Ms. Wang to focus on providing factual evidence regarding the nature of the transaction. The Hearing Officer also stopped at multiple times during the hearing to explain procedural matters to Ms. Wang such as how to present documents, how to ask questions, and the process for making final submissions.

[109] Based on my review of the record of the proceedings and having considered the submissions of the parties, I find that the way in which the Hearing Officer conducted the hearing was procedurally fair and Ms. Wang was afforded a meaningful opportunity to be heard.

[110] Finally, I note that Ms. Wang also raised new issues in her submissions in this proceeding, not raised before the Hearing Officer. In particular, Ms. Wang submitted that in making the loan to her client, she was following R. 30(a) of the *Rules* which requires a realtor to act in the best interests of the client because this avoided the risk that the seller would terminate the contract causing the buyer to lose out on a "good deal". Ms. Wang also made submissions regarding the impact that the unusually lengthy discipline process has had on her personally. Counsel for the Superintendent submits that Ms. Wang raised concerns about the delay in the process for the first time before the Panel Chair. As this judicial review must be on the record below, any arguments not raised before the Hearing Officer cannot be considered on this judicial review, and, therefore, I decline to address these arguments.

[111] As a general rule, where a decision is set aside on judicial review, the court should remit the matter back to the statutory decision-maker unless the circumstances are such that doing so would "stymie the timely and effective resolution of matters in a manner that no legislature could have intended": *Vavilov* at para. 142, citing *D'Errico v. Canada (Attorney General),* 2014 FCA 95 at paras. 18–19. Where it appears that a particular outcome is inevitable and remitting the case would serve no useful purpose, the court may decline to remit a matter.

[112] I am satisfied there is no useful purpose in remitting the appeal of the Liability Decision back to the FST. The allegations giving rise to the complaint against Ms. Wang occurred almost a decade ago, and it is in the interests of all those concerned to bring this matter to a close. As I have explained, properly read and understood, the proceedings before the Hearing Officer were fair, and his decision was reasonable. It is not in the public interest to further prolong the disciplinary proceedings to have this inevitable conclusion confirmed by the FST.

Did the Panel Chair Err in her Disposition of the Appeal?

[113] Given my finding that the Liability Decision was reasonable and fair and should not be remitted back to the FST, it is unnecessary for me to address in any

great detail the Superintendent's submissions that the Panel Chair erred in her failure to remit the matter back to the Hearing Officer. The Superintendent submits that the Panel Chair's Decision to refuse to remit the matter without coming to her own conclusion on the merits of the professional conduct issues before the Hearing Officer had the effect of staying the proceedings, a remedial option not open to her in s. 242.2(11) of the *FIA.* As the Panel Chair failed to properly consider the scope of her statutory powers, the Superintendent submits that her remedy is patently unreasonable under s. 58(3)(d) of the *ATA.* Section 242.2(11) of the *FIA* provides as follows:

> (11) The member hearing the appeal may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person or body whose decision is under appeal.

[114] I accept the submissions of the Superintendent that the Panel Chair did not reverse or vary the decision of the Hearing Officer because she did not come to her own conclusions regarding the substantive questions before the Hearing Officer.

[115] The Superintendent also submits that even if the Panel Chair possessed the ability to stay the proceedings, she failed to undertake the stringent analysis laid down by the Supreme Court of Canada in *Abrametz.* There, the Supreme Court held that a stay of proceedings is reserved for rare cases in which continuing a professional disciplinary proceeding would result in more harm to the public interest than if the proceedings are halted: *Abrametz* at para. 102. At para. 88, the Supreme Court reinforced the public interest in proceedings brought by professional regulators:

> [88] … The public at large expects a professional who is guilty of misconduct to be effectively regulated and properly sanctioned. A professional misconduct hearing involves more than the interests of those affected; rather one needs to consider "the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies": *Adams v. Law Society of Alberta*, 2000 ABCA 240, 266 A.R. 157, at para. 6.

[116] Even where there are circumstances that amount to an abuse of process, *Abrametz* makes clear that remedies short of a stay must be considered and that the

public interest must be considered in determining the appropriate remedy: *Abrametz* at paras. 89–90.

[117] Had it been necessary, I would have found that the Panel Chair's imposition of a stay was patently unreasonable for the following reasons. It is apparent from the Panel Chair's reasons for ordering a stay that she failed to undertake the analysis required by *Abrametz.* She fails to mention, let alone consider, the public interest in the disciplinary proceedings against Ms. Wang. This is despite the fact that the Panel Chair acknowledges that the provision of the loan either created or could have created some problems. Given that Ms. Wang provides services to the public, the Panel Chair was obligated to consider whether it was in the public interest to resolve the issues surrounding the loan rather than ordering a stay solely based on concerns regarding the treatment of Ms. Wang and impact of the delay on the fairness of the proceedings. Moreover, she failed to consider whether a remedy lesser than a stay would be appropriate in the circumstances and its impact on the public interest.

DISPOSITION

[118] Accordingly, I set aside the order made by the FST and reinstate the findings of professional misconduct made by the BCSFA Hearing Officer in the Liability Decision. However, in doing so, this does not oust Ms. Wang's right to have her appeal of the Sanction Decision, which was not addressed substantively by the Panel Chair, heard. Accordingly, Ms. Wang's appeal regarding the Sanction Decision is remitted back to the FST on the basis that the Liability Decision stands.

[119] As the Superintendent is not seeking costs from either Ms. Wang or the FST, I order that all parties are to bear their own costs.

"Hoffman J."