COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Chao v. Hallmark Poultry Processors Ltd.,* 2026 BCCA 108

Date: 20260313
Docket: CA50971

Between:

Ken Kua Yung Chao

Appellant
(Petitioner)

And

Hallmark Poultry Processors Ltd.

Respondent
(Respondent)

And

British Columbia Employment Standards Tribunal

Respondent

Before: The Honourable Mr. Justice Butler
The Honourable Madam Justice Horsman
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated August 28, 2025 (*Chao v. Hallmark Poultry Processors Ltd.*, 2025 BCSC 1781, Vancouver Docket S237815).

The Appellant, appearing in person:	K.K.Y. Chao
Counsel for the Respondent, Hallmark Poultry Processors Ltd.:	G. Christie
Counsel for the Respondent, British Columbia Employment Standards Tribunal:	J.M. O'Rourke

Place and Date of Hearing:	Vancouver, British Columbia March 6, 2026
Place and Date of Judgment, with Written Reasons to Follow:	Vancouver, British Columbia March 6, 2026
Place and Date of Written Reasons:	Vancouver, British Columbia March 13, 2026

Written Reasons of the Court

Summary:

The appellant appeals a chambers judge's decision dismissing his judicial review petition of a Reconsideration Decision of the BC Employment Standards Tribunal upholding the dismissal of his Employment Standards Act complaint alleging that he was not dismissed for cause and thus entitled to compensation on the termination of his employment.

Held: Appeal dismissed. The chambers judge identified patent unreasonableness as the appropriate standard of review and applied it correctly to the Tribunal's Reconsideration Decision. The Reconsideration Decision involved an exercise of discretion, based on an assessment of the evidence. The exercise of discretion was not patently unreasonable having regard to the factors in s. 58(3) of the ATA.

Table of Contents

Reasons for Judgment of the Court:

[1] On March 6, 2026, after hearing the appellant Ken Kua Yung Chao's submissions, we advised that his appeal was dismissed and that written reasons would follow. These are our reasons.

Introduction

[2] On October 20, 2023, the Employment Standards Tribunal (the "Tribunal") upheld a determination that Ken Kua Yung Chao had been dismissed for cause from his employment of more than six years as a packer with Hallmark Poultry Processors Ltd. ("Hallmark"): *Kua Yung Chao (Re)*, 2023 BCEST 90 (the "Reconsideration Decision"). As an employee dismissed for cause, Mr. Chao was not entitled to compensation for his length of service under s. 63(3)(c) of the *Employment Standards Act*, R.S.B.C., 1996, c. 113 [*ESA*].

[3] Mr. Chao sought judicial review of the Reconsideration Decision contending that it was patently unreasonable.

[4] In reasons indexed at *Chao v. Hallmark Poultry Processors Ltd.*, 2025 BCSC 1781 ("Reasons for Judgment"), the chambers judge dismissed Mr. Chao's judicial review petition, concluding that the Reconsideration Decision was not patently unreasonable.

[5] Mr. Chao appeals to this Court.

[6] In his submissions, Mr. Chao referred to various disciplinary actions taken against him during his employment with Hallmark, some of which had been referred to in his materials. We explained that an appeal was not an opportunity for him to give evidence and that the appeal before us was only in respect of the Reasons for Judgment and the earlier Reconsideration Decision.

Background

[7] On September 28, 2021, Mr. Chao failed to isolate on learning that his roommate, who also worked for Hallmark, had tested positive for Covid-19. Mr. Chao continued working for 3.75 hours after learning of her Covid-19 positive test. On October 4, 2021, when Mr. Chao returned to the workplace with a negative Covid-19 test result, Hallmark dismissed him for failing to comply with its policy regarding exposure to Covid-19 (the "Policy"). The Policy required that "employees were not to enter the building if they had been in contact with anyone who was symptomatic [of Covid-19] or living in the same household with a symptomatic individual".

Initial Employment Standards Branch Investigation

[8] On October 5, 2021, Mr. Chao filed an employment standards complaint with the Director of Employment Standards (the "Director") under s. 74 of the *ESA*, alleging that Hallmark had contravened the *ESA* by failing, on his dismissal, to pay him compensation for his six-years of service.

[9] Between April 5, 2021 and January 23, 2023, a delegate of the Director (the "Investigator") investigated Mr. Chao's compliant (the "Investigation"). The Investigator reviewed materials submitted by both parties, interviewed the parties and others, and subsequently prepared a report summarizing these materials and communications (the "Investigation Report"). Both parties were provided an opportunity to respond to the Investigation Report and did so.

Initial Determination

[10] On April 6, 2023, another delegate of the Director of Employment Standards issued reasons for his determination that Mr. Chao's claim for compensation should be dismissed because Hallmark met its onus to prove that it had just cause to dismiss him (the "Determination"). The delegate's Determination was based on the evidence submitted by the parties and the Investigation Report.

[11] In relevant part, the Determination found that due to the Covid-19 pandemic, employers were required to have in place workplace Covid-19 safety plans. The poultry processing industry had faced several shutdowns due to Covid-19 during the first year of the pandemic and, as a result, Hallmark had instituted the Policy. Mr. Chao was aware of the Policy.

[12] During the Investigation, Mr. Chao said that he returned to the plant after finding out about his roommate's positive Covid test because he felt fine, and was showing no symptoms, and that when tested, he was negative for the Covid-19 virus. The Determination concluded:

> …Mr. Chao breached his duty to [Hallmark] and committed serious misconduct. I find that Hallmark had just cause to terminate Mr. Chao and…does not owe [him] compensation for length of service.

[13] In reaching the Determination, the delegate considered the context in which the dismissal occurred including the state of the pandemic and the outbreaks that had occurred in the poultry processing industry.

Appeal to the Employment Standards Tribunal

[14] As he was entitled to do, on May 2, 2023, Mr. Chao appealed the Determination to the Tribunal under s. 112(1) of the *ESA*, alleging that there had been a failure to observe the principles of natural justice.

[15] On August 23, 2023, the Tribunal's Appeal Panel (the "Appeal Panel") dismissed Mr. Chao's appeal and confirmed the Determination: *Kua Yung Chao (Re)*, 2023 BCEST 67 (the "Appeal Decision"). The Appeal Panel found Mr. Chao's submissions did not raise any issues of procedural fairness. Despite that, the Tribunal also considered whether the delegate had erred in finding there was just cause for dismissal but found no error applying the standard of deference to questions of mixed fact and law established in the Tribunal's caselaw. The Appeal Panel dismissed the appeal, concluding that Mr. Chao had not established a basis on which the Appeal Panel could interfere, and, under s. 114(1)(f) of the *ESA*, there was no reasonable prospect that his appeal would succeed.

Application for Reconsideration

[16] As he was entitled to do, on September 4, 2023, Mr. Chao applied to the Tribunal for reconsideration of the Appeal Decision under s. 116 of the *ESA*. For the first time before the Tribunal's Reconsideration Panel (the "Reconsideration Panel"), Mr. Chao argued that it was not his decision to keep working, but that his supervisor had told him to return to work.

[17] On October 20, 2023, the Reconsideration Panel dismissed Mr. Chao's application for reconsideration and confirmed the Appeal Decision: *Kua Yung Chao (Re)*, 2023 BCEST 90 (the "Reconsideration Decision").

[18] The Reconsideration Panel applied the two-stage test from *Re Milan Holdings*, B.C. EST #D313/98. At the first stage, the question is whether the matters raised warrant reconsideration. If the answer to this question is "yes", the second stage involves a consideration of the merits. The Reconsideration Panel concluded that Mr. Chao's application did not pass the first stage of the test.

[19] The Reconsideration Panel noted Mr. Chao's argument was "predicated on evidence that seemingly was not previously put before the Employment Standards Branch, or before the Tribunal on appeal" (para. 10).

[20] The Reconsideration panel acknowledged that if, in fact, a supervisor had specifically directed Mr. Chao to remain at work despite his recent exposure to Covid-19, that information could have influenced the assessment of cause for dismissal. However, the Reconsideration Panel concluded this evidence was not "new" in that it did not meet the "new evidence" ground of appeal under s. 112(1)(c) of the *ESA*. Specifically, it could have been provided, explored and obtained through due diligence (paras. 10–11). The Reconsideration Panel also concluded that Mr. Chao's statement about being directed to remain at work was not credible.

[21] The Reconsideration Panel said:

> 12. The section 112(5) record reveals a consistent argument advanced by [Mr. Chao] … that said nothing about having been directed to work after disclosing that he had been exposed to Covid-19. In his original complaint, [Mr. Chao] stated that he was fired "I am guessing because of covid, I get tested negative but they told me that I am no longer working here, they still fire me." [Mr. Chao] said absolutely nothing about being told to finish his shift notwithstanding his close and very recent Covid-19 exposure. In separate January 3,[4 and 5], 2023 e-mails to the [ESB] officer who was investigating his complaint, [Mr. Chao] maintained that since he never tested positive, he posed no threat to his fellow workers – no mention whatsoever of having been directed to complete his shift after disclosing his exposure.
>
> …

[22] The Reconsideration Panel also commented that although Mr. Chao had responded to the Investigation Report, he had not responded to the parts setting out his evidence that he "was aware of the company policy" when, on September 28, 2021, he "found out that his roommate" had tested positive…and "returned to work the remainder of his shift as he felt fine and was not symptomatic."

[23] His explanation to the Reconsideration Panel was he "just forgot" to provide his explanation that he was directed to return to work by a supervisor. The Reconsideration Panel wrote:

> 16. While I doubt the veracity of [Mr. Chao's] present assertion that a supervisor directed him to complete his shift despite his disclosure that he had been exposed to Covid-19, in any event, this "new evidence" was not admissible on appeal, and it is equally inadmissible in this reconsideration application.

[24] The Reconsideration Panel concluded that there was no reason to disturb the Appeal Decision: at para. 17.

Judicial Review Petition

[25] On November 20, 2023, Mr. Chao filed a petition for judicial review with the British Columbia Supreme Court, arguing that the Reconsideration Decision was patently unreasonable because the Reconsideration Panel had not accepted his evidence that his supervisor directed him to go back to work. He said that during the investigation, and the prior hearings, he had not been asked why he went back to

work and, as a result, he did not give that information: Reasons for Judgment at para. 27.

[26] On August 8, 2025, the chambers judge dismissed Mr. Chao's petition for judicial review. The chambers judge noted that a tribunal's acceptance or rejection of a piece of evidence does not make its decision patently unreasonable. The chambers judge noted that Mr. Chao had made a prior inconsistent statement and there was "ample evidence" on which the Reconsideration Panel could decide that Mr. Chao's submission regarding his supervisor's direction was not credible: Reasons for Judgment at para. 31. The chambers judge found that the Reconsideration Decision was reasonable and, based on the evidence in the record, dismissed the petition for judicial review: Reasons for Judgment at paras. 32–33.

Issues on Appeal

[27] Mr. Chao raises two issues on appeal. As reframed by us, Mr. Chao contends that the chambers judge:

a) did not apply the appropriate standard of review to the Tribunal's Reconsideration Decision; and

b) erred in determining that the Tribunal's Reconsideration Decision was not patently unreasonable.

Standard of Review

[28] On an appeal from a judicial review decision, the role of this Court is to step into the shoes of the chambers judge below by first determining if the chambers judge identified the appropriate standard of review and then determining whether that standard of review was applied correctly. Deference is not owed to the findings of the chambers judge. This Court performs a *de novo* review of the administrative decision: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10–12; *Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36 at para. 45; *Beach Place Ventures Ltd. v. Employment Standards Tribunal,* 2022 BCCA 147 at para. 13.

[29] Only the Reconsideration Decision is properly reviewable, although the Determination and the Appeal Decision may be considered for context: *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457 at para. 16.

[30] Findings of fact and law and exercises of discretion by the Tribunal are subject to a patent unreasonableness standard of review. This is a result of the combined effect of ss. 110 and 103 of the *ESA* and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "*ATA*").

[31] Section 110(1) of the *ESA* provides the Tribunal with "exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration". Section 110(2) of the *ESA* provides that a decision or order of the Tribunal on a matter within its exclusive jurisdiction "is final and conclusive and is not open to question or review in any court".

[32] Section 103 of the *ESA* provides that s. 58 of the *ATA* applies to the Tribunal.

[33] Of particular relevance is s. 58(2)(a) of the *ATA*, which provides that a court must not interfere with a tribunal's finding of fact or law or an exercise of discretion in respect of a matter over which it has exclusive jurisdiction unless it is patently unreasonable.

[34] Section 58(2)(b) of the *ATA* provides that questions of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly. Section 58(3) provides that a discretionary decision is patently unreasonable if the discretion is exercised arbitrarily or in bad faith, is exercised for an improper purpose, is based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account.

[35] Section 112(1) of the *ESA* provides that a person served with a determination may appeal to the Tribunal on the grounds that the Director: (a) erred in law; (b) failed to observe principles of natural justice; and/or (c) evidence has become available that was not available at the time of the determination.

Section 116 of the *ESA* gives the Tribunal discretion, on application or on its own motion, to reconsider any of its own orders or decisions.

[36] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 the majority decision confirmed that where the legislature has indicated the standard of review applicable to a tribunal, courts are bound to respect that designation, within the limits imposed by the rule of law: para. 35.

[37] In this case, the Reconsideration Panel's decision to dismiss Mr. Chao's application involved findings of fact and an exercise of discretion that can only be interfered with if patently unreasonable.

[38] Patent unreasonableness is a highly deferential standard of review. In *Law Society of New Brunswick v. Ryan,* 2003 SCC 20, the Supreme Court of Canada said that a decision is not patently unreasonable unless it is "clearly irrational" or "evidently not in accordance with reason" or "so flawed that no amount of curial deference can justify letting it stand": at para. 52, cited by this Court in *Cariboo Gur Sikh Temple Society (1979) v. British Columbia (Employment Standards Tribunal)*, 2019 BCCA 131 at para. 24. This aligns with the statutory definition of a patently unreasonable exercise of discretion in s. 58(3) of the *ATA*.

Discussion

[39] Section 116 of the *ESA* assigns discretion to the Tribunal to determine whether a decision or order should be reconsidered. As set out in the Reconsideration Panel's reasons, the Tribunal has adopted a two-stage test for reconsideration that requires an applicant, at the first stage, to establish that reconsideration is warranted. In this case, the Reconsideration Panel concluded that Mr. Chao's application did not pass the first stage. The application was based on new evidence that was not before either the Director, when he made his initial determination, or before the Tribunal on the original appeal. In exercising its discretion to refuse the reconsideration request, the Reconsideration Panel found that the new evidence was not admissible.

[40] Before this Court, Mr. Chao does not point to any specific errors in the Reconsideration Decision. Instead, he attempts to reargue issues he has already unsuccessfully raised before the Reconsideration Panel and on judicial review. He submits, again, that his initial justification for returning to work after learning that his roommate had Covid-19—that he is a healthy person and did not feel symptomatic—should be disregarded in favour of the justification, raised for the first time at Reconsideration, that his supervisor directed him to return to work.

[41] The Reconsideration Panel disposed of this argument on the basis that it was effectively "new evidence" that was not previously put before the delegate issuing the Determination, nor was it put before the Appeal Panel. At paragraph 10 of the Reconsideration Decision, the Tribunal wrote:

> "New evidence" is admissible in accordance with the criteria set out in [*Bruce*] *Davies et al.*, BC EST #D171/03. Of particular relevance here, such evidence is only admissible if it could not have been, with the exercise of due diligence discovered and presented to the Employment Standards Branch prior to the Determination being issued. The evidence must also be relevant, material, and credible.

[42] The Reconsideration Panel applied the established *Davies* criteria and concluded that Mr. Chao's "new evidence" was not admissible because it was not new as it could have been provided before the Determination was issued. Mr. Chao's only justification for not raising this evidence earlier was that he "forgot" while at the same time justifying remaining at work by stating "I just felt I am healthy person to finished my job of the day": para. 8.

[43] The Reconsideration Panel found that Mr. Chao's "new evidence" was not credible because he communicated with the Investigator multiple times and said he returned to work because he felt fine and was not symptomatic. In preferring Mr. Chao's original justification for returning to work over his new justification, the Tribunal noted that Mr. Chao had been given the opportunity to review and respond to the Investigation Report which reported that Mr. Chao was aware of Hallmark policy, that he found out his roommate had tested positive when on his morning

coffee break, and he worked the remainder of his shift because he felt fine and was not symptomatic.

[44] While the Reconsideration Panel questioned the veracity of Mr. Chao's new evidence, it concluded that, regardless of its veracity, it "was not admissible on appeal, and is equally inadmissible in this reconsideration application," and, as such, saw "no reason to disturb the [Appeal], which [the Appeal Panel] considered to have been correctly decided."

[45] The chambers judge pointed out that the "crux" of Mr. Chao's patent unreasonableness argument was the new evidence: Reasons for Judgment at paras. 23–24. The chambers judge also addressed Mr. Chao's submission that during the investigation and prior hearings, he was never asked why he went back to work and, as a result, did not give that information: para. 27. The chambers judge indicated that the Reconsideration Decision addressed Mr. Chao's arguments and rejected them at paras. 29–31.

[46] The chambers judge said that a tribunal decision is not patently unreasonable simply because a panel accepts or rejects a piece of evidence—the panel is "entitled and empowered to make findings of fact"—and a chambers judge on judicial review is not "entitled to disturb those facts": para. 29. Accordingly, the chambers judge dismissed Mr. Chao's petition.

[47] We are satisfied that the chambers judge identified the appropriate standard of review, patent unreasonableness, and applied it correctly to the Reconsideration Decision. The Reconsideration Decision involved an exercise of discretion by the Reconsideration Panel, based on its assessment of the evidence. The exercise of discretion was not patently unreasonable having regard to the factors in s. 58(3) of the *ATA*.

Disposition

[48] We dismiss Mr. Chao's appeal. The Tribunal did not seek its costs. Hallmark is entitled to its costs.

"The Honourable Mr. Justice Butler"

"The Honourable Madam Justice Horsman"

"The Honourable Justice MacNaughton"