

Federal Court



Cour fédérale

**Date: 20260115**

**Docket: T-2545-23**

**Citation: 2026 FC 58**

**Toronto, Ontario, January 15, 2026**

**PRESENT: Madam Justice Whyte Nowak**

**BETWEEN:**

**COMMUNITY TRUST COMPANY**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Community Trust Company [CTC] is a federally regulated financial institution licensed under the *Trust and Loan Companies Act*, SC 1991, c 45 [*Trust and Loan Companies Act*]. CTC offers a variety of financial and trustee services including fixed rate residential mortgages as an alternative to large financial institutions. In January 2020, a customer made a formal complaint [Complaint] regarding undisclosed mortgage discharge fees charged by CTC. The matter was

referred to the Financial Consumer Agency of Canada [FCAC], an independent federal body created in 2001 pursuant to subsection 3(1) of the *Financial Consumer Agency of Canada Act*, SC 2001, c 9 [*FCAC Act*]. The FCAC is tasked with supervising financial institutions to determine whether they comply with the consumer provisions of various statutes applicable to them.

[2] At the conclusion of the investigative and adjudicative processes, the Commissioner of the FCAC [Commissioner] issued a decision dated October 30, 2023 [Decision] finding that CTC had contravened two provisions of the *Cost of Borrowing (Trust and Loan Companies) Regulations*, SOR/2001-104 [*Regulations*]: (i) paragraph 6(2.1)(b) [Violation 1]; and (ii) paragraph 8(1)(p) [Violation 2]. The Commissioner imposed an administrative monetary penalty [AMP] of \$1.6 million for Violation 1 and directed the staff of FCAC [FCAC Staff] to address all outstanding compliance issues, including the refunding of amounts uniquely related to Violation 2, through a Compliance Agreement with CTC.

[3] CTC brings this appeal of the Decision on the basis that it contains errors of law and was arrived at in a manner that was procedurally unfair. While CTC admitted that it committed Violation 1, it submits that the AMP imposed by the Commissioner is inappropriate and excessive. It denies liability for Violation 2 as alleged and argues that it was arrived at in a manner that denied it the opportunity to know the case it had to meet.

[4] While I find no merit in CTC's suggestion that it was denied procedural fairness, CTC has shown errors in the Decision which warrant this Court's intervention. For the reasons that

follow, this appeal is allowed, and the Decision is quashed and remitted back to the Commissioner for redetermination.

## II. Legislative Framework

[5] Sections 19 to 31 of the *FCAC Act* authorize the Commissioner to initiate enforcement proceedings for breaches of designated consumer provisions and, where a violation is established, to impose AMPs.

[6] The provisions that may give rise to an AMP include subsection 436(1) of the *Trust and Loan Companies Act* as well as the *Regulations*:

### **Disclosing borrowing costs**

**436 (1)** A company shall not make a loan to a natural person that is repayable in Canada unless the cost of borrowing, as calculated and expressed in accordance with section 437, and other prescribed information have been disclosed by the company to the borrower at the prescribed time and place and in the prescribed form and manner.

### **Communication du coût d'emprunt**

**436 (1)** La société ne peut accorder à une personne physique de prêt remboursable au Canada sans lui communiquer, selon les modalités — notamment de temps, lieu et forme — réglementaires, le coût d'emprunt, calculé et exprimé en conformité avec l'article 437, et sans lui communiquer les autres renseignements prévus par règlement.

[7] The specific violations at issue on this appeal relate to paragraph 6(2.1)(b) and paragraph 8(1)(p) of the *Regulations*, which provide as follows:

### **Disclosure — General**

### **Déclarations — dispositions générales**

**Manner**

**6 (2.1)** For a disclosure statement that is part of a credit agreement in respect of a loan, a line of credit or a credit card or an application for a credit card,

...

**(b)** the applicable information box, as set out in one of Schedules 1 to 5, containing the information referred to in that Schedule, must be presented at the beginning of the agreement or application.

**Forme**

**6 (2.1)** Dans le cas où la déclaration figure dans la convention de crédit portant sur un prêt, une marge de crédit ou une carte de crédit ou dans une demande de carte de crédit :

...

**b)** l'encadré informatif prévu à l'une des annexes 1 à 5, selon le cas, et contenant les renseignements visés à l'annexe applicable est présenté au début de la convention ou de la demande.

**Disclosure — Content****Fixed Interest Loans for a Fixed Amount**

**8 (1)** A company that enters into a credit agreement for a loan for a fixed interest rate for a fixed amount, to be repaid on a fixed future date or by instalment payments, must provide the borrower with an initial disclosure statement that includes the following information:

...

**(p)** the existence of a fee to discharge a security interest and the amount of the fee on the day that the statement was provided; and

**Contenu de la déclaration****Prêts à taux d'intérêt fixe d'un montant fixe**

**8 (1)** La société qui conclut une convention de crédit visant un prêt à taux d'intérêt fixe d'un montant fixe remboursable à date fixe ou par versements doit remettre à l'emprunteur une première déclaration comportant les renseignements suivants :

...

**p)** l'existence de frais pour la radiation d'une sûreté et leur montant le jour où la déclaration est remise;

[8] Subsection 19(2) of the *FCAC Act* sets the maximum penalties for violations committed by individuals, institutions and operators. The current provision came into force April 30, 2020, and provides that:

<b>Maximum penalties</b>	<b>Plafond de la pénalité</b>
<b>19 (2)</b> The maximum penalty for a violation is \$1,000,000 in the case of a violation that is committed by a natural person, and \$10,000,000 in the case of a violation that is committed by a financial institution or a payment card network operator.	<b>19 (2)</b> La pénalité maximale pour une violation est de 1 000 000 \$ si l'auteur est une personne physique, et de 10 000 000 \$ si l'auteur est une institution financière ou un exploitant de réseau de cartes de paiement.

[9] It is important for the purposes of this appeal to note that prior to April 30, 2020, the maximum AMP the Commissioner could impose was \$200,000 (from January 1, 2010 to May 23, 2012) and \$500,000 (from May 24, 2012 to April 29, 2020).

[10] The criteria that the Commissioner must consider when determining the amount of an AMP to impose on a regulated entity is provided for in section 20 of the *FCAC Act*:

<b>Criteria for penalty</b>	<b>Critères</b>
<b>20</b> Except if a penalty is fixed under paragraph 19(1)(b), the amount of a penalty shall, in each case, be determined taking into account	<b>20</b> Sauf dans le cas où il est fixé conformément à l'alinéa 19(1)b), le montant d'une pénalité est déterminé, dans chaque cas, compte tenu des critères suivants :
(a) the degree of intention or negligence on the part of the person who committed the violation;	a) la nature de l'intention ou de la négligence de l'auteur;

<b>(b)</b> the harm done by the violation;	<b>b)</b> la gravité du tort causé;
<b>(c)</b> the duration of the violation;	<b>c)</b> la durée de la violation;
<b>(d)</b> the ability of the person who committed the violation to pay the penalty;	<b>d)</b> la capacité de l’auteur de payer le montant de la pénalité;
<b>(e)</b> the history of the person who committed the violation with respect to any prior violation or conviction under an Act listed in Schedule 1 within the five-year period immediately before the violation; and	<b>e)</b> les antécédents de l’auteur — violation d’une loi mentionnée à l’annexe 1 ou condamnations pour infraction à une telle loi — au cours des cinq ans précédant la violation;
<b>(f)</b> any other criteria that may be prescribed.	<b>f)</b> tout autre critère prévu par règlement.

[11] Notably, the criteria of “the duration of the violation” and “ability to pay” at subsections 20(c) and (d) respectively, were only added to section 20 as of April 30, 2020.

[12] Section 20.1 of the *FCAC Act* states that the purpose of the AMP penalty is to promote compliance with the consumer provisions and compliance agreements and not to punish offenders.

### III. Facts

#### A. *CTC Discharge Fees*

[13] At all relevant times, CTC charged two fees at the time of the discharge of a customer’s fixed rate mortgage. First, CTC charged a \$495 fee to discharge CTC’s security interest in the

property [the Discharge Administration Fee]. There is no dispute that the Discharge Administration Fee was always properly disclosed by CTC. CTC charged a second fee to produce a final mortgage statement relating to the discharge [the \$100 Statement Fee]. CTC acknowledges that between January 20, 2007 and November 30, 2020, it failed to disclose the \$100 Statement Fee in the information box of the credit agreement [Information Box] as required by paragraph 6(2.1)(b) of the *Regulations*. Instead, CTC disclosed the \$100 Statement Fee in its Schedule of Additional Costs.

B. *The Complaint*

[14] On January 23, 2020, CTC received the Complaint regarding fees for the discharge of the customer's mortgage and its balance owing at maturity. The matter was referred to the Ombudsman for Banking Services and Investments [OBSI], who initiated an investigation. The OBSI prepared a "Summary Report – Systemic Bank Issue Reported by External Complaint Body," dated February 5, 2021 [Summary Report], which characterized the identified compliance issues as "systemic" and noted unclear or incorrect disclosure of borrowing costs by CTC and its charge of a discharge fee without informing its customers. OBSI reported CTC to the FCAC. CTC ultimately settled with the OBSI on November 29, 2020, and made organizational changes to its compliance program including changes to its Information Box and Schedule of Additional Costs.

[15] On February 10, 2021, the FCAC contacted CTC regarding the Summary Report which noted failures to disclose in accordance with provisions of the *Regulations*, including its charge of the \$100 Statement Fee without disclosing the fee to customers. After the FCAC Staff

contacted CTC, CTC determined the issue met the reporting threshold and formally reported the matter to FCAC itself.

C. *The FCAC Investigation*

[16] In April 2021, the FCAC Staff commenced an investigation regarding CTC’s disclosure of mortgage fees payable upon discharge. The investigation generally followed the process outlined in the FCAC Supervision Framework [Supervision Framework]. Between October 2022 and April 2023, FCAC Staff and CTC had a number of communications, including meetings, telephone conversations and written correspondence.

[17] On December 6, 2022, CTC was informed that the FCAC Staff opened a new investigation relating to paragraph 6(2.1)(b) of the *Regulations*, which became the subject of what is referred to in this appeal as Violation 1.

[18] On December 22, 2022, FCAC Staff issued a Level 3 Notice of Breach [Notice of Breach] to CTC [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] On

February 15, 2023, FCAC Staff informed CTC in writing that its investigation had identified breaches related to paragraph 8(1)(p) of the *Regulations*.

[19] A draft compliance report prepared by FCAC Staff and submitted to the Commissioner, concluded there were reasonable grounds to believe that CTC violated paragraphs 6(2.1) (b) and 8(1)(p) of the *Regulations*. On March 3, 2023, FCAC Staff provided CTC with portions of the draft Compliance Report for fact-checking, which CTC did on March 17, 2023.

D. *The Notice of Violation*

[20] On April 5, 2023, the Deputy Commissioner Supervision and Enforcement Branch of the FCAC issued a Notice of Violation followed by a final compliance report [Final Compliance Report], which stated that the Commissioner had reasonable grounds to believe that CTC committed the following violations in respect of the \$100 Fee Statement:

- (i) Violation 1 - from January 1, 2010 to November 30, 2020, CTC failed to provide borrowers who entered into a fixed rate mortgage agreement with an information box that included the types and amount of other fees as required by paragraph 6(2.1)(b) of the *Regulations*; and
- (ii) Violation 2 – from January 20, 2007 to November 30, 2020, CTC failed to provide borrowers who entered into a fixed rate mortgage agreement with an initial disclosure statement that included a fee to discharge a security interest as required by paragraph 8(1)(p) of the *Regulations* [collectively, the Violations].

[21] Based on an application of the FCAC Administrative Monetary Penalties Framework [AMPF] and a finding that the Violations continued past April 30, 2020 (*i.e.* date of the AMP amendments), the Notice of Violation proposed AMPs of \$1.6 million for Violation 1, and of \$1.55 million for Violation 2.

[22] CTC sought and obtained an extension of time to make representations to the Commissioner [Written Representations]. In its Written Representations dated June 5, 2023, CTC admitted to Violation 1 as alleged in the Notice of Violation but disputed Violation 2 as alleged. CTC submitted that the proposed AMPs for both Violations were inappropriate and excessive.

E. *The Decision*

[23] On October 30, 2023, pursuant to subsection 23(2) of the *FCAC Act*, the Commissioner issued the Decision confirming the Notice of Violation. In her Decision, she determined that CTC had violated paragraphs 6(2.1) (b) and 8(1)(p) of the *Regulations*. The Decision was based on CTC's admission with respect to Violation 1, the Notice of Violation, the Final Compliance Report and CTC's Written Representations.

[24] The Commissioner accepted CTC's admission of liability for Violation 1 (for failing to disclose the \$100 Statement Fee in the Information Box as required by paragraph 6(2.1)(b) of the *Regulations*) and imposed a penalty of \$1.6 million. The Commissioner considered the AMP to be appropriate to promote compliance by CTC and serve the purpose of specific and general deterrence. She stated that a compliance agreement was no substitute for the determination of an appropriate penalty amount relative to the Violations which she considered to be "damaging to confidence in the financial system, and the reputation of CTC, if breaches of disclosure provisions are allowed to remain undetected and unremedied for extended periods."

[25] The Commissioner found a “very significant level of negligence” related to how CTC fulfilled its compliance and regulatory responsibilities noting that CTC had “some knowledge” of the issues. The Commissioner acknowledged the changes made by CTC in 2020 but also noted the long duration of the Violations and the lack of self-reporting. The Commissioner acknowledged the very low level of financial harm occasioned by the Violations based on the low median financial impact per customer and the fact that CTC had provided financial remediation to customers for Violation 1. The Commissioner noted the long duration of the Violations and CTC’s positive compliance history, the latter of which the Commissioner viewed as a mitigating factor.

[26] The Commissioner found CTC’s failure to disclose the \$100 Statement Fee in the initial disclosure statement to make out Violation 2, finding that it is a fee “in relation to” the discharge of a mortgage as referred to in paragraph 8(1)(p) of the *Regulations*. The Commissioner did not impose an AMP and instead directed FCAC Staff to address all outstanding compliance issues, including the refunding of amounts uniquely related to Violation 2, through a Compliance Agreement with CTC.

[27] On November 30, 2023, CTC filed a Notice of Appeal in this Court.

#### IV. Issues and Standard of Review

[28] The following issues have been raised on this appeal:

- A. Did the Commissioner err in assessing the AMP for Violation 1?

- (1) Did the Commissioner apply the wrong maximum AMP?
  - (2) If the Commissioner applied the wrong maximum AMP, does the public protection exception to the presumption against retrospective application of statutes apply?
  - (3) Did the Commissioner fetter her discretion in determining the amount of the AMP for Violation 1?
  - (4) If the Commissioner erred in assessing the AMP for Violation 1, what remedy should this Court provide?
- B. Did the Commissioner err in finding that CTC committed Violation 2 as alleged?
- C. Was the Decision with respect to Violation 2 made in breach of the principles of procedural fairness?

[29] As a statutory appeal under subsection 24(1) of the *FCAC Act*, the ordinary appellate standards apply (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 36-37, 50-52). According to *Housen v Nikolaisen*, 2002 SCC 33 at paragraphs 26-36 [*Housen*], questions of fact and questions of mixed fact and law (absent an extricable question of law) are reviewable on the deferential standard of palpable and overriding error, whereas questions of law are reviewable on a non-deferential standard of correctness (*Housen* at paras 8, 10, 21, 37 and *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46).

[30] As to the issue of procedural fairness, the ultimate question to be answered by a reviewing Court is whether the applicant knew the case to meet and had a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56).

V. Analysis

A. *The Commissioner erred in assessing the AMP for Violation 1*

[31] CTC has admitted to the conduct underlying Violation 1 but challenges the amount of the AMP imposed by the Commissioner. CTC argues that the AMP should either be set aside entirely or substantially reduced for three reasons.

(1) The Commissioner erred in her application of the maximum AMP

[32] CTC submits that the Commissioner erred in exclusively applying the current version of subsection 19(2) of the *FCAC Act*, given that 95% of the breaches occurred before April 30, 2020, when the maximum penalties were increased. CTC submits that the Commissioner's error violates the fundamental presumption that Parliament does not intend legislation to apply retrospectively or retroactively (citing *Brosseau v Alberta Securities Commission*, [1989] 1 SCR 301 at 317 and *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at paras 43-45, 48 [*Tran*]).

[33] CTC takes the position that each non-compliant agreement constitutes a separate violation or discrete event and the fact that CTC remained non-compliant across multiple agreements over time should not be conflated with a “continuing” state of breach as the Commissioner found (citing *Canada (Attorney General) v Hislop*, 2007 SCC 10 at para 127 [*Hislop*]).

[34] The Commissioner addressed CTC's argument as follows:

According to CTC, FCAC Staff erred in using the maximum penalty amount of \$10 million dollars under s. 19(2) of the Act in its analysis. According to CTC, it is inappropriate to use the \$10 million maximum in this case because the loans affected by the non-compliant disclosure occurred predominately [*sic*] while the maximum allowable penalty per violation was \$500,000.

It is well-settled that a breach in disclosure requirements is present and continuing until corrected. The number of loans made, or frequency of the transactions, does not alter whether a violation has occurred and continues to occur until it is remedied. As the disclosure in question was not remedied until December 2022, the Violations were continuing after the new maximum penalty amounts had taken effect. Therefore, FCAC Staff correctly applied the maximum amount in force at that time in their analysis.

[35] The Respondent submits that the Commissioner correctly found that a breach in disclosure requirements continued to exist after April 30, 2020, and remained ongoing until CTC corrected its disclosure statements. If the breach is considered continuing, then the Respondent argues that the amended AMP maximum is properly applied to a situation made up of a series of events whose legal effects straddle the date it came into force (citing *Épiciers Unis Métro-Richelieu Inc, division Éconogros v Collin*, 2004 SCC 59 at para 46).

[36] The temporal application of the amended version of subsection 19(2) of the *FCAC Act* is a question of law, which means that the standard of review that applies is that of correctness (*Canada (Attorney General) v Almalki*, 2016 FCA 195 at para 24 [*Almalki*]).

[37] In order to determine whether the presumption against retrospectivity is “in play,” the recognized first step is to characterize “the situation [to] which the statute applies” (*Almalki* at paras 43-44 citing *Benner v Canada (Secretary of State)*, [1997] 1 SCR 358 at paras 45-46

[*Benner*]). This requires considering whether, in all of the circumstances, the legislative scheme attaches legal consequences to the past event or the current condition resulting from it (*Hislop* at para 127 citing *Benner* at para 46). Nowhere in the Decision did the Commissioner undertake this analysis; instead, the Commissioner focused on the fact that the breaches making up Violation 1 were continuing until remedied. Neither the Commissioner nor the Respondent cited any authority for this proposition and there is nothing in the language of subsection 19(2) of the *FCAC Act* that justifies such a focus.

[38] Rather, a purposive interpretation of the legislative scheme as *Benner* calls for, makes clear that subsection 19(2) of the *FCAC Act* permits the imposition of an AMP for a “violation,” which in the case of Violation 1, is CTC’s failure to identify the \$100 Statement Fee in the Information Box at the time it was provided to a borrower as required by subsection 436(1) of the *Trust and Loan Companies Act* and paragraph 6(2.1)(b) of the *Regulations*. Moreover, subsection 22(1) of the *FCAC Act* states that “[e]very contravention or non-compliance that is designated under paragraphs 19(1)(a) to (a.2) constitutes a violation and the person that commits the violation is liable to a penalty determined in accordance with sections 19 and 20.”

[39] I therefore find that the Commissioner erred in law by exclusively applying the post-April 30, 2020 maximum AMP of \$10 million under subsection 19(2) of the *FCAC Act* to Violation 1 when breaches that occurred before the amendment on April 30, 2020, should have been subject to the maximum penalties in force when they were committed (*Rowan v Ontario Securities Commission*, 2012 ONCA 208 at para 65).

[40] Based on this finding, it necessarily follows that the Commissioner also erred in law by applying the current set of criteria in section 20 of the *FCAC Act* to the 95% of Violations that occurred before these criteria came into force on April 30, 2020.

(2) The exception to retroactivity tied to public protection does not apply

[41] The Respondent argues that even if the Court finds an error in the Commissioner's retrospective application of the AMP penalty maximum, the public protection exception to the presumption against retrospectivity applies (citing Ruth Sullivan, *The Construction of Statutes*, 7d (Toronto: LexisNexis Canada, 2022) at §25.07).

[42] The Respondent has not made out this exception. The fact that a penalty seeks to promote compliance rather than punish, is not sufficient to apply a new provision retrospectively; rather, the public protection exception is only triggered where the design of the penalty itself shows that Parliament has weighed the benefits of such an application against the potential unfairness that would result (*Tran* at para 50). There is no such indication in the amendment to subsection 19(2) of the *FCAC Act*, which merely increases the maximum amount of the AMP. In the words of *Tran*, there is no clear nexus between the protective measure and the risks to the public associated with the prior conduct to which it attaches nor any attempt to tailor the measure to prevent risks prospectively (*Tran* at paras 49, 50).

- (3) The Commissioner did not fetter her discretion in determining the amount of the AMP for Violation 1

[43] CTC submits that the Commissioner fettered her discretion in determining the amount of the AMP for Violation 1 in two ways: first, by following a “siloed” approach to the prescribed section 20 criteria for determining an AMP; and second, by applying the AMPF methodology too rigidly.

[44] The AMPF provides as follows:

	Level 1	Level 2	Level 3
Harm (includes aspects of duration)	Some harm	Significant harm	Very significant harm
	\$0 to \$2,000,000	\$2,000,000 to \$4,000,000	\$4,000,000 to \$6,000,000
Negligence/Intent (includes aspects of duration)	Some negligence	Significant negligence	Very significant negligence or intent
	\$0 to \$500,000	\$500,000 to \$1,000,000	\$1,000,000 to \$2,000,000
Violation History	Little to no history	Significant history	Very significant history
	\$0 to \$500,000	\$500,000 to \$1,000,000	\$1,000,000 to \$2,000,000

[45] This Court has recognized that issues of fettering are not particularly amenable to a standard of review, and that a decision that is the product of fettered discretion should be set aside on the basis of a reviewable error regardless of the nomenclature that is employed to reach

this result (*Austin v Canada (Citizenship and Immigration)*, 2018 FC 1277 at para 16 citing *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 24).

[46] I agree with the Respondent that there is no basis for CTC's suggestion that the Commissioner fettered her discretion by following a siloed approach that looked at each of the prescribed criteria as a unique consideration giving rise to a specific portion of the AMP as dictated by the AMPF. While the AMPF itself is suggestive of such an approach, the Commissioner properly positioned the role of the AMPF and its use in her Decision when she stated:

The publication of the Administrative Monetary Penalties Framework serves to appropriately inform regulated entities about how the legislative provisions will be applied by FCAC Staff. The result is a recommendation from FCAC Staff that is clearly articulated and against which the regulated entity has an opportunity to argue. The Commissioner's discretion is unfettered by this process.

[47] Accordingly, while the Commissioner considered the AMPF to be a transparent tool for use by the FCAC Staff and the regulated entity, she did not consider it to constrain her own decision making. She was also clearly mindful of her independent role in assessing an appropriate penalty to impose and she carried out her assessment in a manner that was separate and apart from FCAC Staff's analysis under the AMPF, including by choosing not to impose an AMP for Violation 2 contrary to the FCAC Staff's recommendation.

[48] CTC also submits that the Commissioner unlawfully fettered her discretion by treating the AMPF as a rigid mathematical formula rather than as a non-binding guideline (citing *Kabul Farms Inc v Canada*, 2016 FCA 143 at para 41 [*Kabul Farms*]).

[49] According to CTC, section 20 of the *FCAC Act* requires the Commissioner to consider each of the listed factors “in each case”; however, by mechanically applying the formula outlined in the AMPF instead, and refusing to adjust the penalty in light of CTC’s particular facts and submissions, the Commissioner failed to exercise her discretion as Parliament intended, thereby fettering her discretion (citing *Kabul Farms* at paras 40-41).

[50] While I agree that it would be a reviewable error for the Commissioner to apply the AMPF in a rigid manner given that it imposes limitations not found in section 20 of the *FCAC Act*, CTC has not shown on a balance of probabilities that the Commissioner fettered her discretion as it alleges.

[51] First, CTC argues that the Commissioner fettered her discretion by following the AMPF which restricts the criterion of “duration” to considerations going to negligence and harm when there is nothing in the language of section 20 of the *FCAC Act* which calls for such a limitation. However, a fair reading of the Decision shows that the Commissioner considered duration as a stand-alone factor. The fact that the Commissioner was of the view that the criteria of negligence or intent, and harm adequately captured the element of duration “in this case,” reflects the Commissioner’s proper consideration of the factors as applied to the unique set of facts before her. Her statement “there is no need for further consideration in reaching my conclusions regarding the amount of the penalties to impose,” further shows she did not feel constrained, let alone by the AMPF.

[52] Second, CTC submits that the Commissioner's strict application of the AMPF prevented her from considering a reduction in the size of the AMP based on mitigating factors such as CTC's compliance history and the low level of harm occasioned by the Violations, since the AMPF gives mitigating factors neutral treatment with no possibility that they can reduce the size of the AMP. Again, there is nothing in the Decision to suggest that the Commissioner felt constrained by the AMPF in the manner in which she treated the mitigating factor of CTC's compliance history or the level of harm, and she was entitled in the exercise of her discretion to give a mitigating factor neutral treatment.

[53] Finally, CTC submits that the Commissioner's consideration of the "ability to pay" criteria failed to consider the disproportionate size of the AMP relative to its size and level of revenue and income. However, I can find no reviewable error related to the Commissioner's exercise of her discretion in her rejection of CTC's submission when she held:

The question of proportionality is not whether the proposed penalty amounts are proportional to the size of CTC, but whether they are proportional and appropriate to promote compliance.

[54] The criterion of "ability to pay" is broadly worded and it was open to the Commissioner to interpret this criterion in this case in a manner that is consistent with the purpose of the AMP penalty as provided for in section 20.1 of the *FCAC Act* to promote compliance with the consumer provisions.

[55] Accordingly, I find that CTC has not shown that the Commissioner fettered her discretion in her consideration of the factors that must be considered in imposing an AMP for Violation 1.

- (4) The Court’s exercise of its discretion to remit the matter back to the Commissioner

[56] CTC submits that if the Commissioner is found to have erred in setting the AMP for Violation 1, then the Court should exercise its powers under subsection 24(3) of the *FCAC Act* to vary the Decision by setting a revised AMP. CTC has proposed that the Court either limit the AMP to \$200,000 on the basis that the first breach was in 2010 and “everything after that did not matter for the purposes of triggering the maximum,” or alternatively, by applying a formula it came up with that aims to reflect the percentage of breaches subject to the different maximums and which results in an AMP of \$496,400.

[57] The Respondent submits that the appropriate remedy would be to remit the matter back to the Commissioner for determination of the appropriate AMP. The Respondent cites *Norwich Real Estate Services Inc (RE/MAX Kelowna) v Financial Transactions and Reports Analysis Centre of Canada*, 2024 FC 1996 and *Kabul Farms* as examples where the Court has previously declined to calculate penalties in statutory appeals despite having the power to do so under similarly worded provisions. I agree with this approach.

[58] While subsection 24(3) of the *FCAC Act* empowers this Court to step into the shoes of the Commissioner, this cannot be easily done. The selection of an AMP under subsection 19(2) of the *FCAC Act* is a highly discretionary exercise that requires the Commissioner’s expertise in a specialized field of regulation as well as her understanding and experience in setting an AMP that is not punitive but instead promotes compliance with the *FCAC Act* (*Kabul Farms* at para 22).

B. *The Commissioner erred in approach to the statutory interpretation of Violation 2*

[59] CTC argues that the Commissioner erred in two ways in determining that CTC committed Violation 2.

[60] First, the Commissioner erroneously based her interpretation of paragraph 8(1)(p) of the *Regulations* solely on the purpose of the legislative scheme without considering the text of the provision.

[61] Second, the Commissioner erred in finding that the \$100 Fee Statement falls within a proper statutory interpretation of paragraph 8(1)(p) of the *Regulations*. CTC notes that paragraph 8(1)(p) refers to “a fee to discharge a security interest” and the Commissioner read words into paragraph 8(1)(p) when she found that the \$100 Statement fee was a fee “*in relation to*” the discharge of a mortgage. CTC submits that only the Administrative Discharge Fee is charged to discharge a mortgage, and this fee was properly disclosed.

[62] The Respondent submits that the Commissioner correctly interpreted paragraph 8(1)(p) of the *Regulations* by focusing on its purpose and intent and she made no palpable and overriding error in finding on the evidence that the \$100 Statement Fee falls within this provision given that it is always charged by CTC in order to discharge a mortgage.

[63] I agree with the Appellants that the Commissioner erred in her approach to the statutory interpretation of paragraph 8(1)(p) of the *Regulations*, an error to which the correctness standard

applies (*Housen* at paras 8, 33). While the Commissioner purports to consider a “plain reading” of the *Trust and Loan Companies Act* and the *Regulations*, the Commissioner’s exclusive focus is on the context and purpose of the legislative scheme which emphasizes the importance of full disclosure and accountability.

[64] The Commissioner’s approach is not in keeping with the modern approach to statutory interpretation and the “text as anchor” approach dictated by the Supreme Court of Canada in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at paragraphs 23, 24. The Commissioner was required to consider the actual wording of paragraph 8(1)(p) and to consider its context within the legislative scheme including in relation to other provisions such as paragraphs 8(1)(k) and (q), which she failed to do. In fact, the Commissioner was dismissive of such an approach stating:

No amount of parsing the language of the Regulations, or asserting that unrelated disclosures can be construed to cover this specific circumstance, changes the fact that the \$100 Statement Fee was charged in relation to discharging a security interest and was not disclosed as such in the initial Disclosure Document.

[65] As the Supreme Court of Canada warned:

The Court cannot disregard the actual words chosen by Parliament and rewrite the legislation to accord with its own view of how the legislative purpose could be better promoted (*Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 40).

[66] It is because Parliament’s choices must be respected, that this Court declines to consider whether Violation 2 falls within paragraph 8(1)(p) of the *Regulations* based on a proper statutory

interpretation. To do so would be to usurp the role of the Commissioner who Parliament determined is best suited to determine Parliament's intention based on the text, context and purpose of the provision given her expertise and experience.

C. *CTC was not denied procedural fairness*

[67] CTC submits that it was denied procedural fairness in relation to Violation 2 in two ways which were contrary to the standard FCAC internal process as set out in the Supervision Framework.

[68] First, it did not have advanced notice of the specific provision of the *Regulations* at issue in Violation 2 because a Notice of Breach was not issued prior to the Notice of Violation. Second, it was not given an opportunity to respond to the final Compliance Report because FCAC Staff issued the Notice of Violation and final Compliance Report on the same day.

[69] The Commissioner addressed CTC's complaint in the following manner:

I am not persuaded that CTC has experienced a lack of procedural fairness in this proceeding. While a Notice of Breach may normally be issued prior to a Notice of Violation, and there is usually time elapsed between the issuance of the final Compliance Report and the issuance of the Notice of Violation, the fact that these circumstances did not occur in this case does not, by itself, give rise to a lack of procedural fairness in the conduct of this proceeding.

The record before me shows that CTC had several opportunities to know the case against it and to present its views prior to the issuance of the Notice of Violation on April 5, 2023. FCAC Staff and CTC were actively engaged in discussing the issues giving rise to Violation 2, through calls and written exchanges, in late 2022. FCAC Staff's position relative to s. 8(1)(p) of the *Regulations* was made explicit, and in writing, in January 2023. CTC also had the

opportunity to provide detailed comments on excerpts from the draft Compliance Report, many of which were reflected in the final version.

In any case, CTC's concerns are not present in this proceeding. The Notice of Violation was issued in compliance with the Act and provides CTC with full detail of the case against it. CTC sought and received a 30-day extension in order to provide extensive written Representations relating to this proceeding, including on the Notice of Violation and final Compliance Report, all of which are included in the record before me. As a result, CTC had full knowledge of the allegations against it and was afforded sufficient opportunity to present its case, thus ensuring an appropriate level of procedural fairness.

[70] The Commissioner clearly focused on the right question: whether CTC knew that there was an issue regarding the disclosure of its \$100 Statement Fee in connection with a customer's discharge of a mortgage and had a chance to respond to the issue.

[71] Not only is the Supervision Framework promoted as describing the "general approach" to typical supervision matters, but it expressly provides that "FCAC reserves the right to adjust its approach, as necessary." Moreover, as the Respondent points out (and the Commissioner alludes to), a Notice of Breach is not required to be provided under the *FCAC Act* and CTC was provided with the Notice of Violation, which is prescribed (see subsection 22(2) of the *FCAC Act*). Accordingly, I see no basis for CTC's suggestion that it had a legitimate expectation that the FCAC Staff would follow its process of issuing a Notice of Breach and Compliance Report prior to issuing a Notice of Violation to CTC.

[72] There is no question that CTC understood the charge behind Violation 2 and was afforded a fair opportunity to respond to it despite not receiving a copy of the Final Compliance

Report in advance. CTC has not highlighted any significant differences in the two reports nor has it suggested that it would have given a different response than it did to the draft Compliance Report.

VI. Conclusion

[73] CTC's appeal is allowed and pursuant to paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7, this matter shall be referred back to the Commissioner for redetermination on the issue of the amount of the AMP for Violation 1 and on the issue of whether Violation 2 was committed as alleged.

**JUDGMENT in T-2545-23**

**THIS COURT'S JUDGMENT is that:**

1. The appeal is allowed.
2. The decision of the Commissioner of the Financial Consumer Agency of Canada dated October 30, 2023 is set aside, and the matter is remitted back to her for redetermination on the issues of the amount of the administrative monetary penalty for Violation 1 and whether Violation 2 was committed as alleged; and
3. CTC is awarded costs in the amount and on the terms agreed upon by the parties, which is \$2,644.20 payable within 60 days with interest to accrue thereafter at a rate of 3% per annum.

"Allyson Whyte Nowak"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2545-23

**STYLE OF CAUSE:** COMMUNITY TRUST COMPANY v ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 18, 2025

**JUDGMENT AND REASONS:** WHYTE NOWAK J.

**DATED:** JANUARY 15, 2026

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