

CANADA / JUDGMENT

Sandhu v. Fraser Valley Real Estate Board

2023 BCSC 640

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Supreme Court of British Columbia

DECIDED

20 April 2023

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2023 BCSC 640 Sandhu v. Fraser Valley Real Estate Board

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sandhu v. Fraser Valley Real Estate Board,

2023 BCSC 640

Date: 20230420

Docket: S224182

Registry: Vancouver

Between:

Jasbir Sandhu

Petitioner

And

Fraser Valley Real Estate Board

Respondent

On judicial review from: An order of the Fraser Valley Real Estate Board's Professional Conduct Committee, dated October 20, 2021 and March 23, 2022

Before: The Honourable Justice Iyer

Reasons for Judgment

Counsel for Petitioner:

R. R. Hira, K.C.

R. N. Hira

Counsel for Respondent:

D. R. Bennett, K.C.

K. Smiley

Place and Date Hearing:

Vancouver, B.C.

January 23 and 24, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 20, 2023

OVERVIEW

- [1] The petitioner, Jasbir Sandhu, is the managing broker of a real estate agency. He seeks orders setting aside decisions of the Business Practices Committee and Appeal Board (respectively, "Committee" and "Appeal Board") of the respondent, the Fraser Valley Real Estate Board ("FVREB"), finding him in breach of the Canadian Real Estate Association Code of Conduct ("Code") and imposing penalties. Mr. Sandhu claims that the decisions constitute oppressive and unfairly prejudicial treatment, contrary to s. 102 of the Societies Act, S.B.C. 2015, c. 18 ("Act") and that they were procedurally unfair. In the alternative, he argues that there was an irregularity in the notice provided to him, contrary to the requirements of s. 70(3)(a) of the Act, justifying the court's intervention under s. 105.
- [2] The decisions relate to a complaint made in May 2020 against Mr. Sandhu and Kamal Gill, one of his real estate agents, arising from events that occurred in February and March 2016. As against Mr. Sandhu, the complaint concerned his arrangements for a substitute managing broker during his medical leave of absence and his involvement in a particular transaction where Ms. Gill represented the vendor. Following the process set out in the FVREB's Constitution and Bylaws, the Committee investigated the complaint and held a hearing.
- [3] The Committee's decision, dated October 12, 2021 ("Decision") dismissed two of the three allegations against Mr. Sandhu, but found one substantiated. Mr. Sandhu appealed. On March 23, 2022, the Appeal Board issued its decision ("Appeal Decision"), dismissing the appeal and adding additional penalties. I refer to the decisions collectively as "Decisions".

- [4] The relationship between the FVREB and its members is contractual and its terms are set out in the FVREB's Constitution and Bylaws. As Mr. Sandhu challenges the Decisions under the Act's oppression remedy provisions, the central question is whether they amount to oppressive and unfairly prejudicial conduct. I will set out the uncontroversial factual background and address the legal principles and issues before applying them to the facts.

FACTS

Background to Complaints

- [5] Mr. Sandhu is a real estate agent and managing broker of a Century 21 real estate business located in the Fraser Valley that employs about 300 agents. He is a member of the FVREB. Although the FVREB is a voluntary association incorporated under the Act, in order for real estate agents who operate in the Fraser Valley to get access to MLS listings, they must be members of the FVREB. In practice, this means that it is almost impossible to run a successful real estate business in the Fraser Valley without being a member of the FVREB.
- [6] The FVREB's Constitution and Bylaws set out a process for making complaints about members. The process provides for the following steps: receipt of complaints, notification of the member, an opportunity for the member to respond, an investigation, a hearing, and an appeal. The Constitution and Bylaws adopt the standards in the Code as rules with which members of the Board must comply. As a member of FVREB, Mr. Sandhu agreed to comply with the Code and to submit to its complaint process, including discipline, if he contravened the Code.
- [7] In February 2016, Mr. Sandhu took a leave of absence for approximately two months to obtain medical treatment in India. Before doing so, he arranged for Kalvinder Bassi to replace him as interim managing broker. Mr. Sandhu informed the agents in his Century 21 office of his forthcoming leave and Mr. Bassi's appointment by sending a text through Touchbase, an in-house text message system. He also announced his leave and Mr. Bassi as his replacement at a regular meeting of the agents about a month before he left. Attendance at these meetings was encouraged but not mandatory, and about 100 of 300 agents usually attended. The information was also documented in the meeting agenda/minutes that was retained for two months after each meeting. All agents had access to it.
- [8] While Mr. Sandhu was away, Ms. Gill acted for the vendor in a transaction that did not complete. The agent acting for the purchaser was Charandeep Dhatt. He convinced her to transfer \$8,000 to his personal account, which he said he would transfer to his client. In fact, he kept the money for himself.

- [9] Ms. Gill was not aware that Mr. Sandhu was on leave because she had not read the Touchbase text message, nor attended the meeting, nor checked the agenda/minutes. She was unaware that Mr. Bassi was the interim managing broker. She telephoned Mr. Sandhu to discuss the situation. When she called him, she reached him in India. Mr. Sandhu told Ms. Gill that he was on leave and suggested that she contact Mr. Bassi. She did not connect with Mr. Bassi but tried unsuccessfully to resolve the matter herself.
- [10] After Mr. Sandhu's leave ended and he returned to work, he assisted Ms. Gill. He filed a complaint against Mr. Dhatt with the FVREB in July 2016. He also helped Ms. Gill file a civil claim against Mr. Dhatt in Provincial Court. That claim was dismissed on a limitation defence; however, the Provincial Court Judge criticized Mr. Dhatt for his dishonesty and Ms. Gill for her incompetence. In 2020, the Committee found that Mr. Dhatt had contravened various provisions of the Code and imposed penalties on him.
- [11] In May 2020, Mr. Dhatt filed a complaint against Ms. Gill and Mr. Sandhu. Ultimately, in May 2021, Ms. Gill agreed to a consent decision on discipline, which included admissions of facts relating to her contraventions of the Code. None of those admitted facts relate to Mr. Sandhu or the allegations against him. Although the complaint was filed against both Ms. Gill and Mr. Sandhu, as they were dealt with separately, it is not necessary to address the process, facts or findings relating to Ms. Gill. I refer to the complaint against Mr. Sandhu as the "Complaint".

Complaint Process

- [12] The complaint process in the Bylaws gives the Committee the power to inquire into complaints about members of the FVREB alleging, among other things, that they have infringed the Bylaws or the Code. A Committee member delegated to investigate the complaint has the power to gather evidence, including from the respondent.
- [13] After a confidential investigation report is completed, the Committee decides whether to refer the matter to a hearing. If that occurs, the respondent must be given written notice of the hearing date at least five days before it occurs. The investigation report is not admissible at the hearing and is not disclosed to the respondent.
- [14] At the hearing, the Committee may hear oral evidence from witnesses and admit documentary evidence. The respondent has the right to counsel. Transcripts of the hearing are made.
- [15] After the hearing, the Committee decides whether the allegations have been substantiated. It must provide the respondent with a written decision, signed by the Committee members, stating whether the respondent is guilty and if so, what penalty is imposed. The Bylaws say expressly that the Decision may or may not include reasons. Penalties range from reprimands and education, through fines and suspensions, to expulsion.

- [16] Only the respondent has a right of appeal, which must be exercised by written notice within 21 days of the Committee's decision. There are three grounds of appeal: (a) the Committee misinterpreted or misapplied the Bylaws or Code (or regulations and rules), (b) the initial hearing was procedurally deficient or unfair, or (c) the penalty was excessive.
- [17] There is an appeal fee of \$1,000. The material before the Appeal Board consists of the notice of appeal, the decision appealed from, the hearing transcript and the documents filed at the initial hearing. The appellant (respondent) must be given notice of the appeal hearing at least ten days in advance and has the right to counsel.
- [18] The Appeal Board may admit new evidence. In its decision, it may dismiss the appeal or set aside the Committee's decision, remit the matter back to the Committee or substitute its own decision, and may vary the penalty in any way it considers appropriate. While the decision must be in writing, the Appeal Board is not required to give reasons.

Progress of Complaint Against Mr. Sandhu

- [19] The Committee notified Mr. Sandhu about the Complaint on May 19, 2020, and asked for his response. In July 2020, Mr. Sandhu sent two responses to the Committee along with a number of documents. The Committee investigated the matter and decided to hold a hearing. On October 21, 2020, it sent Mr. Sandhu formal notice that the matter would proceed to a hearing.
- [20] The notice informed Mr. Sandhu that the charge against him was that he "may have failed to supervise and control the activities of Ms. Kamal Gill, and other personnel for which he is responsible" contrary to Article 22 of the Code. It particularized the allegations as follows, stating that Mr. Sandhu:
- a) may have failed to properly review the MLS Listing Contract submitted to the Brokerage and verify that all pertinent documentation for the subject property was included as per his office policies;
 - b) may have failed to adequately communicate his leave of absence from the office or that there was an alternative Managing Broker to communicate with during his medical leave and absence from Canada; and,
 - c) may have had communications with Ms. Kamal Gill in which he provided advice during the time period whereby she provided a personal bank draft directly to another REALTOR to entice a General Release of Contract, and when he found out about this matter at the very least insist that Ms. Kamal Gill speak to the on duty Managing Broker rather than offering to handle the situation when he returned to Canada.

- [21] The notice informed Mr. Sandhu of the jeopardy he faced, citing and quoting the relevant provision of the Bylaws. It explained that, if the complaint was not dismissed, the Board could impose penalties including reprimand, suspension, training, a fine of up to \$30,000, expulsion and/or paying the hearing expenses.
- [22] Mr. Sandhu was represented by counsel throughout the process.
- [23] On May 3, 2021, Mr. Sandhu received a notice of hearing that informed him of the hearing date on June 30, 2021, again setting out the particular allegations against him. The notice advised him that he could present evidence and included information on hearing procedures.
- [24] Ms. Gill, Mr. Bassi and Mr. Sandhu all testified at the hearing. They were examined and cross-examined by Mr. Sandhu's counsel and by counsel for the FVREB. The five panel members also asked some questions. Mr. Sandhu's book of documents was entered as an exhibit. Counsel made opening and closing submissions.
- [25] In the Decision, the Committee dismissed the first and third allegations against Mr. Sandhu without stating its reasons for doing so. It found the second allegation substantiated. In relevant part, it wrote:

Mr. Jasbir Sandhu failed to establish clear policies regarding the access of, and communication with, the replacement Managing Broker, as well as the role and responsibilities to be undertaken by the replacement Managing Broker. While he was away on medical leave, Mr. Sandhu continued to act as Member-Link, performing some duties of the Member-Link. In proceeding in this manner, Mr. Sandhu's actions caused confusion about his purported leave of absence and the availability of an alternative Managing Broker, thus undermining the adequacy of the communication provided to the REALTORS in his Brokerage regarding his leave, as well as the replacement Managing Broker's respective role during that time. The Hearing Panel found that there was no evidence to support direction was given to office staff or to the answering service that Mr. Sandhu was away and that a replacement Managing Broker was available to them.

- [26] The Committee found that Mr. Sandhu had breached Article 22 of the Code. It reprimanded him, issued a letter of caution and ordered him to pay one-third of the hearing expenses of \$10,942.42, or \$3,647.47.
- [27] Mr. Sandhu submitted his notice of appeal on November 5, 2021 along with the appeal fee and necessary documents. In its letter of December 14, 2021 confirming the appeal hearing date, the FVREB referred Mr. Sandhu to the provisions of the Bylaws governing appeals, including the section authorizing the Appeal Board to vary a penalty and to impose any of the penalties the Committee could have awarded.

[28] The appeal was heard on March 17, 2022, with submissions made by counsel for Mr. Sandhu and for the Board. The Appeal Decision did not contain reasons. The Appeal Board dismissed the appeal and varied the penalty imposed by the Committee, ordering Mr. Sandhu to attend a course for managing brokers and pay the costs of the appeal.

APPLICABLE LEGAL PRINCIPLES

[29] Subsection 102(1) of the Act provides:

102 (1) A member of a society may apply to the court for an order under this section on the grounds that

(a) the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to the member or to the member and one or more other members, or

(b) an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to the member or to the member and one or more other members.

[30] In *Dalpadado v. North Bend Land Society*, 2018 BCSC 835, this Court explained the test for relief under s. 102 as requiring the petitioner to prove that the society in question, "has failed to meet the petitioners' reasonable expectations and, on an objective basis, that this failure involved oppressive conduct or prejudicial consequences" (para. 110).

[31] In *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2020 BCCA 348 [Surrey Knights BCCA], the Court of Appeal adopted the approach in *Dalpadado* and summarized the factors relevant to the s. 102 analysis as follows (para. 116):

- section 102 gives a court a broad discretion to grant an equitable remedy to enforce what is not just legal, but fair;
- the inquiry into oppressive or unfairly prejudicial conduct is fact-specific and assessed on the basis of the reasonable expectations of the applicant member in the context of the relationships at play;
- factors relevant to determining reasonable expectations include the size, nature and structure of the society, the general practice in the business of the society, the relationship between the parties, past practice, steps the applicant could have taken to protect itself, representations and agreements made, and the fair resolution of conflicting interests between the society and its members;
- the applicant must establish harm to its peculiar legal or proprietary interests, distinct from the interests of other members: see *Jaguar Financial Corporation* at para. 179;
- if the applicant establishes a breach of reasonable expectations, the court must then determine whether the conduct complained of amounts to oppression or unfair prejudice; and

· while oppression connotes more serious conduct than unfair prejudice, bad faith need not be shown, as it is the effect rather than the subjective intent behind the impugned conduct that is key to a finding of oppression: see *Icahn Partners LP v. Lions Gate Entertainment Corp.*, 2011 BCCA 228 at para. 71; and *Wilson v. Alharayeri* at paras. 41-42.

ISSUES

[32] The issues arising from Mr Sandhu's oppression claim are:

- a) What were Mr. Sandhu's reasonable expectations of the FVREB's complaint hearing process, including the Decisions?
- b) Did the complaints process or Decisions breach his reasonable expectations?
- c) If so, do the breaches constitute oppressive or unfairly prejudicial conduct?

[33] In the alternative, Mr. Sandhu argues that the FVRB failed to give him adequate notice contrary to s. 70(3)(a) of the Act, which requires written notice before disciplining or expelling a member. This notice requirement has been judicially interpreted to require a society to include some description of the factual basis relating to the conduct in issue (*Bains v Khalsa Diwan Society of Abbotsford*, 2021 BCCA 159 at para. 46). Section 105 permits a court to intervene where s. 70(3)(a) has been breached. Mr. Sandhu says that the allegations that the FVREB provided to him were insufficiently detailed. I address this issue below in relation to Mr. Sandhu's oppression remedy claim that there was no evidence to support substantiation of the complaint.

[34] The FVREB raises an issue about the scope of judicial review of voluntary associations, suggesting it is very limited. Courts have recognized that the scope of review varies with the nature of the organization. Judicial review is limited for more informal voluntary organizations, including sports clubs, and for religious organizations. It is broader for voluntary organizations that wield significant power over their members in areas like employment, such as trade unions: *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2018 BCSC 1748 [Surrey Knights BCSC] at para 83.

[35] As a society in which membership is very important - if not essential - to working as a real estate agent in the Fraser Valley, the FVREB is more like a trade union than a sports club. The terms of its Bylaws reflect this by creating a detailed complaints process and an internal appeal. The concerns about the limited scope of judicial review in cases like *Surrey Knights* do not arise here.

[36] In addition to the oppression remedy claim, for the reasons set out below, I address Mr. Sandhu's claim about delay as an aspect of procedural fairness.

MR. SANDHU'S REASONABLE EXPECTATIONS

[37] In his petition, Mr. Sandhu states his reasonable expectations as follows:

- a. If he provided evidence to meet the allegations against him, he would be cleared of any wrongdoing as alleged;
 - b. The [FVREB] would act in accordance of [sic] its Constitution, Bylaws, Code and Standards;
 - c. The [FVREB] would act in good faith in exercising its decision-making authority; and
 - d. That if his appeal was dismissed and further penalties were imposed, reasons for dismissing the appeal would follow.
- [38] The FVREB submits that Mr. Sandhu has failed to establish any reasonable expectations at all because his affidavit does not expressly state them.
- [39] The determination of reasonable expectations is a question of fact (Surrey Knights BCCA at para. 67), assessed objectively. The Constitution and Bylaws provide evidence from which members' objectively reasonable expectations about the complaints process can be inferred. However, Mr. Sandhu also says that his expectations of the complaints process were based on "past practices" or a "norms" that differ from the Constitution and Bylaws. Having failed to do adduce any evidence of such practices or norms, these arguments are not open to him.
- [40] The FVREB and Mr. Sandhu differ in their approach to procedural fairness. The FVREB treats procedural fairness as a duty independent of the oppression remedy and reasonable expectations' analysis, while Mr. Sandhu treats procedural fairness as a reasonable expectation.
- [41] Both approaches have judicial support: some cases have addressed procedural fairness separately from the oppression remedy analysis (for example, Surrey Knights BCSC) while others have treated procedural fairness concerns as part of the reasonable expectations' analysis (for example, Dalpadado).
- [42] To the extent that Mr. Sandhu's procedural fairness concerns are grounded in the Constitution and Bylaws, I will address them in the reasonable expectations' analysis. However, Mr. Sandhu's concern about delay is not rooted in the Constitution or Bylaws because they are entirely silent on time limits for filing complaints. I will therefore address delay under the common law principles of procedural fairness.
- [43] The FVREB submits that Mr. Sandhu's first expectation is not reasonable because it interprets Mr. Sandhu as saying that he expected that the evidence he tendered would lead to a favourable outcome. Clearly, the Constitution and Bylaws do not support an inference that all respondents who tender evidence will have their complaints dismissed. I do not interpret Mr. Sandhu's expectation in this way.
- [44] The Constitution and Bylaws create reasonable expectations about the process, not outcomes. It is reasonable to infer from the fact that the Bylaws provide for the admission of evidence that the Committee (and Appeal Board) will make their decisions based on that evidence:

SECTION 2 - Business Practices Committee

The Board and Respondent(s) are entitled to call witnesses and may also submit the Statutory Declaration of any person concerning the facts in dispute. The Board shall enter a book of documents into evidence at the hearing.

The Chief Executive Officer shall cause the evidence to be recorded.

APPEAL PROCEDURE

- (p) The appeal shall not constitute a new hearing or a re-hearing, but shall be heard and determined upon the appeal books, unless the Board of Appeal shall admit new evidence to supplement the evidence at the hearing, as the Board of Appeal may do if it considers it necessary or desirable.

In proceeding with the appeal, the Board of Appeal may proceed in such manner as in its discretion it deems advisable and without being bound by the rules of evidence or other legal rules.

- [45] Mr. Sandhu's second expectation is that the Committee and Appeal Board would comply with the Constitution and Bylaws. It is a reasonable expectation that a contracting party will comply with the contract.
- [46] Mr. Sandhu's third expectation is that the Committee and Appeal Board would act in good faith in deciding the complaint against him. The Bylaws support the inference that this is a reasonable expectation.
- [47] Mr. Sandhu's fourth expectation is that the Appeal Board would provide reasons if it is dismissing his appeal and varying a penalty imposed by the Committee. However, the Bylaws expressly state that the Appeal Board is not required to give reasons. I find that Mr. Sandhu could not have had a reasonable expectation that the Appeal Board would provide reasons in his case.

BREACH OF REASONABLE EXPECTATIONS

- [48] Mr. Sandhu alleges that the FVREB breached his reasonable expectations by providing him with inadequate notice, and not deciding the complaint based on the evidence before it. His allegation of bad faith is simply that the Decisions were not based on the evidence, so it is not necessary to address that issue separately.
- [49] With respect to adequacy of notice, Mr. Sandhu points to s. 70(3)(a) of the Act as informing the content of the notice requirement in the Bylaws. I accept that both the Act and the Bylaws require a respondent to a complaint be given "some description" of the factual basis or concern about the impugned conduct so as to inform the respondent of the key issues and general concerns (Bains at paras 45-46, 53). This requires disclosure of the issues or concerns, not a recitation of the evidence a tribunal will consider relevant to those issues or

concerns.

- [50] Mr. Sandhu says he was not adequately informed that the allegations included communications policies or communications to office staff, including the telephone answering service, and did not realize he should tender evidence on these topics. The description provided in the relevant allegation is that he:

may have failed to adequately communicate his leave of absence from the office or that there was an alternative Managing Broker to communicate with during his medical leave and absence from Canada.

- [51] This allegation informed Mr. Sandhu that the adequacy of his communications about his leave and Mr. Bassi's availability and role were in issue. Reasonably interpreted, it told him that the Committee was interested in what he did or did not communicate about his absence and Mr. Bassi's role, and with whom he did or did not communicate. It was up to Mr. Sandhu and his counsel to decide what evidence to tender on those topics. The fact that Mr. Sandhu did not tender evidence about policies or what, if anything, was said to office staff and the answering service was is not attributable to any defect in the notice he was given.

- [52] I find that the FVREB did not breach Mr. Sandhu's reasonable expectation with respect to adequate notice.

- [53] Mr. Sandhu also submits that the Decisions breached his reasonable expectation because they were not based on the evidence.

- [54] If there was no evidence to support the Committee's conclusion, the FVREB would be in breach of Mr. Sandhu's reasonable expectation that the Committee would decide the complaint based on the evidence before it. However, it is important to distinguish between a decision that is based on no evidence and a decision that is based on limited evidence. The former is contrary to the reasonable expectation that a decision-maker will decide based on the evidence before it. The latter is a non-reviewable disagreement about an outcome.

- [55] The Committee's reasons make clear that it accepted Mr. Sandhu's evidence about when and how he communicated his absence and Mr. Bassi's role, but found that these communications were insufficient to comply with the requirements of Article 22 of the Code. The Decision says that access to and communication with Mr. Bassi during Mr. Sandhu's leave were not clearly communicated, pointing to evidence that Mr. Sandhu continued to do some managing broker work while on leave. It found that this manner of proceeding caused confusion. It also pointed to the absence of any evidence of direction being given to the office staff or answering service about Mr. Sandhu being away and Mr. Bassi being available.

- [56] Mr. Sandhu does not dispute that he did some work while on leave nor that he tendered no evidence of his directions to office staff or the answering service. The Committee's reasons show that the Decision is supported by some evidence. While the reasons are brief, this is not a case of a decision based on no evidence. Mr. Sandhu's reasonable expectation that the Decisions would be based on the evidence was not breached.
- [57] I find that there was no breach of Mr. Sandhu's reasonable expectations within the meaning of s. 102 of the Act.

PROCEDURAL FAIRNESS AND DELAY

- [58] Mr. Sandhu's submissions on this issue are unclear.
- [59] The facts relating to delay are straightforward. The relevant events occurred in March 2016. Mr. Sandhu filed a complaint against Mr. Dhatt in July 2016, which the Committee found substantiated in 2020. Mr. Dhatt filed the Complaint in May 2020. The delay complained of is between the time the events occurred and when the Complaint was filed, and was known to Mr. Sandhu when he responded to the Complaint.
- [60] Mr. Sandhu did not raise delay as a bar to proceeding with the hearing, either before or at the Committee hearing or at the Appeal Board hearing. In his closing submissions to the Committee, counsel for Mr. Sandhu referred to the evidence that the Touchbase text messages were no longer available and that the answering service was no longer in business as part of his submission that the evidence failed to show the inadequacy of Mr. Sandhu's communications:

We really shouldn't be addressing six years later - sorry five years later this type of event. It should have been dealt [with] greater alacrity, and in [any] event, it appears to be the result of vengefulness on behalf of Mr. Dhatt.

- [61] Mr. Sandhu did not distinguish between the time prior to the Complaint and the time between the Complaint and the Committee hearing. He did not elaborate on the consequences of Mr. Dhatt's alleged vengefulness.
- [62] The allegation about the inadequacy of Mr. Sandhu's communications was the only issue before the Appeal Board as the Committee had dismissed the other two allegations against Mr. Sandhu. The transcript of that hearing shows that Mr. Sandhu advanced a number of arguments in support of his appeal. His primary argument was that he had not contravened Article 22 of the Code because his communications were adequate. He identified the key issues as the Committee having misapplied or misinterpreted the Bylaws, having acted in a procedurally unfair way, and having imposed an excessive penalty. With respect to procedural fairness, he argued that he should have had an opportunity to cross-examine Mr. Dhatt (an argument not raised before this court), that the hearing occurred five and a half years after the events in question, that the allegations were not sufficiently specific nor decided on the factors set out in the Code, that the Decision failed to address the evidence relating to Mr. Sandhu's communications, and that there was no evidence to support the

Committee's conclusion.

- [63] Before both the Committee and Appeal Board, Mr. Sandhu submitted that there was evidence of actual delay-caused prejudice before the Committee including the deletion of the Touchbase text messages and destruction of meeting minutes/agendas, the deletion of the answering service records, as well as Mr. Bassi's inability to remember if he was at the meeting where Mr. Sandhu announced his leave. He referenced *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44. At one point, Mr. Sandhu suggested that a stay of proceedings could be appropriate, but he did not develop this submission.
- [64] As noted, all of the delay in this case occurred before Mr. Dhatt filed his complaint against Mr. Sandhu. Mr. Sandhu did not argue that the Committee could not hear the complaint because it was filed so long after the relevant events either when he received the complaint or at the hearing before the Committee. He has not explained why he failed to do so.
- [65] Further, Mr. Sandhu's petition to this court does not seek a stay of proceedings. Rather, it seeks orders setting aside the Decision and Appeal Decision as contrary to s. 102 of the Act or, in the alternative, as contrary to s. 105. The main argument in the petition is set out under the heading "The Oppressive and Unfairly Prejudicial Conduct" as consisting of failing to follow the Constitution and Bylaws and the procedures they establish and deciding against Mr. Sandhu without any evidentiary basis to do so. The next heading is "Further Oppressive and Unfairly Prejudicial Procedural Fairness Issues" and under that heading Mr. Sandhu simply cites delay as one of five examples of these flaws.
- [66] I conclude from this that delay-caused abuse of process, for which a stay is the appropriate remedy, is not before me in this judicial review. However, if I am wrong in this conclusion, I would not accede to Mr. Sandhu's arguments re-framed as an abuse of process.
- [67] In its 2022 decision, *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, the Supreme Court of Canada revisited delay-caused abuse of process as an aspect of procedural fairness, clarifying *Blencoe*. It explained that delay may constitute an abuse of process either when it compromises the fairness of the hearing by impairing a party's ability to respond to the case against them or, despite a fair hearing, the delay is "manifestly unfair to a party to the proceedings or in some other way brings the administration of justice into disrepute": paras. 41, 72.
- [68] *Blencoe* itself is an example of the second type of delay-cause abuse of process. Mr. Sandhu's arguments are about the first type of delay.
- [69] The Committee gave three reasons for its decision: 1) Mr. Sandhu's continuation of his work during his absence undermined the adequacy of his communication; 2) the lack of evidence to support that he gave direction to his office staff; and 3) the lack of evidence to support that there was an answering service indicating his absence and Mr. Bassi's temporary role.

[70] The Committee accepted Mr. Sandhu's evidence describing the Touchbase text message he sent and his evidence that it was noted in the paper copy of the minutes/agenda kept in the office. Counsel for Mr. Sandhu argued before me that the unavailable evidence is "potentially exculpatory", but did establish an evidentiary basis for this submission. For example, at the Committee hearing, Mr. Sandhu was not asked about his recollection of what he communicated to office staff or the answering service. As a result, Mr. Sandhu's submission that the delay between the events and the filing of the complaint made the proceeding procedurally unfair remains speculative. He has failed to establish procedural unfairness at common law.

CONCLUSION

[71] In summary, I conclude that Mr. Sandhu has not established any breach of reasonable expectations under s. 102(1) of the Act, nor has he established a contravention of the notice requirements on s. 70(3). I find that he has not raised delay amounting to procedural fairness in this petition; however, if he has, I has not established it.

[72] The petition is dismissed.

"Iyer J."

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Prepared on 28 October 2026 · Esheria