

ISLAND REGULATORY AND APPEALS COMMISSION

BETWEEN:

GREENFIELD CAPITAL INC.

Appellant

and

**RESORT MUNICIPALITY OF STANLEY BRIDGE, HOPE RIVER, BAYVIEW, CAVENDISH
AND NORTH RUSTICO**

Respondent

PRELIMINARY HEARING ON THE QUESTION OF JURISDICTION

WRITTEN SUBMISSIONS OF THE RESPONDENT

PART I – BACKGROUND

1. On 11 December 2023, the council of the Resort Municipality (“Council”) adopted a new official plan and land use bylaw for the Resort Municipality.¹
2. On 17 May 2024, Greenfield Capital Inc. (“Greenfield”) filed four applications with the Resort Municipality. These four applications consisted of:
 - (a) two applications for subdivision approval; and
 - (b) two applications for rezoning.²
3. On 22 May 2024, the planning board of the Resort Municipality discussed the applications filed by Greenfield. The planning board recommended that these applications be tabled

¹ Tab 1 of the Record.

² Tab 3 of the Record.

until the new official plan and bylaw are approved by the Minister of Housing, Land and Communities (“Minister”).³

4. On 23 May 2024, the Resort Municipality sent the new official plan and land use bylaw for the approval of the Minister.
5. On 27 May 2024, Council discussed the applications filed by Greenfield. Council did not approve these applications. Council did not deny these applications. Council instead tabled these applications until the new official plan and bylaw are approved by the Minister.⁴
6. On 17 June 2024, Greenfield filed a notice of appeal with the Island Regulatory and Appeals Commission. This notice of appeal asks the Commission to approve Greenfield’s applications for subdivision approval and rezoning; or, alternatively, to remit the applications back to Council, with directions.
7. On 2 July 2024, counsel for the Resort Municipality filed correspondence asserting that this appeal should be dismissed for want of jurisdiction. Approximately one week later, the Commission requested written submissions on the question of its jurisdiction to hear this appeal.

³ Tab 5 of the Record.

⁴ Tab 6 of the Record.

PART II – ISSUE

8. These submissions address only one issue: does the Commission have jurisdiction to hear this appeal?
9. For the reasons set out below, the answer to this question is no.

PART III - SUBMISSIONS

10. The argument below advances three main points:
 - (a) First, in administrative law, there is a distinction between an interim decision and a final decision.
 - (b) Second, under the *Planning Act*, RSPEI 1988, c P-8, an appellant must identify a final decision of a municipal council in order to invoke the appellate jurisdiction of the Commission. The Commission does not have jurisdiction to hear appeals from the numerous interim decisions that a council must make in the course of assessing an application.
 - (c) Third, in the matter at hand, the notice of appeal identifies four decisions of Council, but not one of these decisions is a “final decision” as that term is understood in administrative law.
11. From these points, it follows that this appeal should be dismissed in its entirety.

A. In administrative law, there is a distinction between an interim and a final decision

12. A decision-maker must make many “decisions” – in the colloquial sense of that word – in the course of fulfilling its statutory mandate. Consider, for example, what transpires when a decision-maker receives an application seeking to invoke its jurisdiction. The decision-maker must first decide whether it actually has jurisdiction to hear the application. If the decision-maker does have jurisdiction, it must then decide how to solicit and receive submissions from interested parties. After receiving submissions, the decision-maker must decide the various issues that go to the merits of the underlying application. Once these issues have been decided, the decision-maker must decide how, if at all, to publish its reasons. Each one of these decisions further necessitates additional decision-making in relation to communication, discussion, public notice, etc.
13. Administrative law divides these various decisions into two categories: final and interim. A decision is final if it “finally decides the merits of the case, even though methods of implementation remain to be decided, or if it finally disposes of the case, even if it does not decide the merits.”⁵ A decision is interim, by contrast, if it is not final.⁶

⁵ Sarah Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis Canada, June 2022) at § 6.01 [last accessed 29 July 2024] [*Blake*] **[Tab 2C of these submissions]**.

⁶ See, for example, the types of interim decisions discussed in *Blake*, *supra* note 5 at § 6.01 (decisions on jurisdictional, procedural or evidentiary issues; decisions on whether to initiate a proceeding; decisions on policy pronouncements) **[Tab 2C of these submissions]**.

14. Interim and final decisions respectively differ in terms of their procedural requirements and legal effects. An interim decision, for example, does not require reasons;⁷ is not subject to strict procedural constraints;⁸ and generally cannot be appealed or judicially reviewed.⁹
15. Important considerations of policy undergird the prohibition against appealing interim decisions. An appeal of an interim decision can fragment and complicate the administrative process, leading to delays, added costs, and wasted resources.¹⁰ An appeal of an interim decision may also become pointless if the party that is dissatisfied with the interim decision eventually succeeds on the final decision.
16. It is important to note, however, that the prohibition against appealing interim decisions does not prevent parties from seeking relief from an erroneous interim decision. It simply means that the parties must wait for a final decision to be issued before attempting to commence an appeal. In most cases, disagreement with an interim decision can be a ground for appealing the final decision.¹¹

B. An appellant must identify a final decision of a municipal council in order to invoke the appellate jurisdiction of the Commission

17. The Commission, as a creature of statute, has no inherent jurisdiction. To the contrary, the Commission has only such jurisdiction as is granted to it by the Legislature.¹² In the context of land use planning at the municipal level, the Commission derives its appellate jurisdiction from clauses 28(1.1)(a) and (b) of the *Planning Act*. Neither clause grants the Commission jurisdiction to hear an appeal from an interim decision of a council.

Clause 28(1.1)(a) requires an appellant to identify a final decision of a council

18. Clause 28(1.1)(a) empowers the Commission to hear an appeal from “a decision of a council of a municipality” made in respect of certain applications:

28(1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, **a decision of a council of a municipality**

(a) that is made in respect of an application by a person under a bylaw for

(i) a development permit,

⁷ Blake, *supra* note 5 at § 2.23 [Tab 2B of these submissions].

⁸ Blake, *supra* note 5 at § 2.05 [Tab 2A of these submissions].

⁹ Blake, *supra* note 5 at § 6.01 [Tab 2C of these submissions].

¹⁰ See, for example, [Tahn v Law Society of Alberta](#), 2021 ABCA 139 (CanLII) at para 7 and the cases cited thereat [Tab 3 of these submissions].

¹¹ *Ibid.*

¹² See, for example, [Clare Fagan v. City of Summerside](#) (CanLII), 2022 PEIRAC 2 (CanLII) at para 14 [Tab 4 of these submissions].

- (ii) an occupancy permit, in relation to a matter under this Act or the regulations,
- (iii) a preliminary approval of a subdivision, or
- (iv) a final approval of a subdivision.

[emphasis added]

19. This provision resembles a standard appeal-creating provision insofar as it simply provides that there is a right to appeal from a “decision” of the underlying decision-maker. These types of provisions are consistently interpreted as permitting appeals only from final decisions. As Sarah Blake explains:

Any right to appeal a tribunal’s decision must be found in the statute governing that tribunal. If none is found, the tribunal’s decisions cannot be appealed. A tribunal cannot create a right to appeal its decisions.

Typically, a statute grants a right of appeal from a “decision” or “order”. This permits only appeals of final decisions. Interim rulings on bias or on jurisdictional, procedural or evidentiary issues may not be appealed, nor may a refusal to initiate a proceeding, nor a policy pronouncement. A decision is regarded as final if it finally decides the merits of the case, even though methods of implementation remain to be decided, or if it finally disposes of the case, even if it does not decide the merits. A party who was successful in the result may not appeal even though dissatisfied with the tribunal’s reasons.¹³

20. There is little indication that the Legislature, in enacting clause 28(1.1)(a), intended to break from this norm. This is not surprising: as noted above, strong policy considerations militate against the creation of a right to appeal from interim decisions. Clause 28(1.1)(a) of the *Planning Act* is therefore best interpreted as requiring an appellant to identify a final “decision of a council” in order to invoke the Commission’s jurisdiction.

Clause 28(1.1)(b) requires an appellant to identify a final decision of a council

21. Clause 28(1.1)(b) permits an appellant to appeal from a decision of a council of a municipality to “adopt an amendment to a bylaw”.

28(1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, **a decision of a council of a municipality**

...

¹³ Blake, *supra* note 5 at § 6.01 [emphasis added; internal citations removed] [Tab 2C of these submissions].

(b) to adopt an amendment to a bylaw, including

(i) an amendment to a zoning map established in a bylaw,
or

(ii) an amendment to the text of a bylaw.

22. The Commission has already interpreted this provision as requiring, as a prerequisite to the Commission's exercise of jurisdiction, that an appellant identify a final decision of council to adopt an amendment to a bylaw. See *Wheeler (Re)*, [2016 CanLII 156564 \(PE IRAC\)](#) at para 12 [**Tab 5 of these submissions**]. Indeed, the reasons in *Wheeler* suggest that the right to appeal created by clause 28(1.1)(b) may be even more restrictive than the right to appeal created by clause 28(1.1)(a). More precisely, *Wheeler* suggests that an appellant seeking to appeal under clause 28(1.1)(b) must identify a certain type of final decision in order to invoke the Commission's jurisdiction – *i.e.*, a decision to approve, rather than a decision to deny, an amendment to a bylaw.
23. To summarize, in this context, the Commission derives its jurisdiction from clauses 28(1.1)(a) and (b) of the *Planning Act*. Both of these provisions permit appeals only from final decisions of the council of a municipality. They do not empower the Commission to hear appeals from interim decisions.

C. In the matter at hand, the notice of appeal fails to identify a final decision of Council

24. The notice of appeal filed by Greenfield asks the Commission to overturn four decisions made by Council on 27 May 2024. But these decisions by Council did not finally dispose of, or decide the merits of, the underlying applications. They simply deferred to a later date Council's consideration of these applications. The decisions identified in the notice of appeal are therefore interim, rather than final, decisions. The Commission has no jurisdiction to hear an appeal from these interim decisions.

PART IV – DISPOSITION

25. For the reasons set out above, the Resort Municipality respectfully asks that this appeal be dismissed in its entirety.

ALL OF WHICH is respectfully submitted this 30th day of July, 2024.



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§2.05 COMMON LAW PROCEDURAL REQUIREMENTS: THE DUTY TO BE FAIR

Administrative Law in Canada, 7th Ed.

Sara Blake

Administrative Law in Canada, 7th ed. (Blake) > Part I Proceedings Before the Tribunal > Chapter 2 Tribunal Procedure

PART I PROCEEDINGS BEFORE THE TRIBUNAL

Chapter 2 TRIBUNAL PROCEDURE

§2.05 COMMON LAW PROCEDURAL REQUIREMENTS: THE DUTY TO BE FAIR

In the absence of prescribed procedural rules, the courts require that a statutory decision that affects the rights of an individual person be made following fair procedures.¹ This requirement is called the “doctrine of fairness” or the “duty to act fairly”.²

At a minimum, the duty to act fairly requires that, before a decision adverse to a person’s interests is made, the person should be told the case to be met and be given an opportunity to respond.³ The purpose is twofold. First, it gives the person to be affected an opportunity to influence the decision. Second, the information received from that person may assist the decision maker to make a rational and informed decision.⁴ A person is more willing to accept an adverse decision if the process has been fair.

The right to be heard is not a right to the most advantageous procedure⁵ nor a right to have one’s views accepted⁶ nor a right to be granted the remedy sought.⁷ It is only a right to have one’s views heard and considered by the decision maker.

A variety of procedural options are available to meet the duty to be fair. What is “fair” in a given case depends on the circumstances.⁸ The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations.⁹ Sometimes, all that is required is that the person be advised verbally of the gist of the proposed decision and the reasons for it and be permitted to respond verbally.¹⁰ In some cases written notice and an opportunity to make written submissions will suffice. Written submissions may take many forms including completion of a questionnaire,¹¹ a letter stating one’s position, an exchange of correspondence in which the issues are discussed¹² or a formal application supported by documentary evidence and reports of experts. Sometimes a person cannot adequately answer the case without an oral hearing, which may be conducted in a variety of ways. It may be an informal interview with an agent of the decision maker, a round table discussion with the tribunal¹³ or a formal proceeding similar to a civil trial or an inquisitorial process. A party may be entitled to see documents relied on by the decision maker and to cross-examine witnesses. Sometimes a decision maker may refer the fact-finding process to others for investigation and report. The main consideration in choosing the appropriate procedure is whether the procedure gives the persons affected a fair opportunity to be heard.

The same procedure is not expected of all tribunals. There is great variety in the types of tribunals and in the types of decisions made by them. The concept of procedural fairness is not a fixed concept. It varies with the context and the interests at stake.¹⁴ “At the heart of this analysis is whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly.” The Supreme Court of Canada has identified the following five factors to be considered in determining what is appropriate.¹⁵

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1.

Nature of the Decision and Process Followed in Making It

First, this factor refers to whether the decision is of a legislative or policy nature and affects the community as a whole, or is an adjudicative decision that turns on questions of fact and law and affects the interests of a single individual. The process is different for a discretionary decision based on policy considerations than for an adjudicative decision that applies statute to the facts of the case. Second, this factor concerns the statutorily prescribed process for making the decision. Sometimes the prescribed process is an indication of the nature of the decision. That is, the closer the prescribed procedure is to the trial model, the more likely the decision involves an adjudication of an individual case.

To make a discretionary policy decision, a court-type procedure is not expected.¹⁶ Many statutes confer decision-making powers on Cabinet, Ministers and other public officials to enable them to respond to political, economic and social concerns. These types of decisions do not attract a duty of fairness and are subject only to statutorily prescribed procedural requirements.¹⁷ These decision makers may consult anyone but need not make disclosure of the “case to be met”. Neither disclosure nor an invitation to a meeting creates procedural rights.¹⁸ Even where the decision affects the interests of only one person, the duty of fairness may be met by giving notice and permitting the person to make written submissions to a lower official who must ensure that the person’s position is put before the Minister or Cabinet. There is no right to an oral hearing.¹⁹

Some decisions of elected bodies such as municipal councils and school boards may be legislative and free of the duty to act fairly.²⁰ A by-law is legislative if it is of general application and based on policy. However, if Council’s decision will adversely affect the interests of one individual more than others, there may be a duty to act fairly, even though the decision is based primarily on public interest concerns.²¹ Prescribed procedure typically applies at a late stage in policy development, after internal identification of a problem and assessment of policy approaches to solving it. Once solutions are proposed, procedural rights may arise for those directly affected.²² The typical process involves the gathering of information and recommendations from a variety of sources and the consultation of persons who may be interested.²³ Where public hearings or consultation are mandated, the tribunal may not waive the requirement²⁴ and meaningful public participation may require public disclosure of reports.²⁵

As the nature of the decision becomes less policy laden and more concerned about individual rights and duties, more procedural requirements may be imposed. See the third factor below.

Where a decision-making power is conferred on a government official, the procedural requirements should be consistent with the bureaucratic model of decision making, which is characterized by expertise, teamwork and the division of labour.²⁶

The procedural requirements are usually higher with respect to a final decision than with respect to an interim decision. There may be no procedural constraints on an interim decision, especially if there is a right to a hearing before a final decision.²⁷ For example, where protection of the public requires an interim suspension of a licence, a requirement to hold a prior hearing, or even to notify the licensee in advance, may frustrate the need for prompt action.²⁸ If an interim decision has serious consequences for the party affected, a hearing should be convened as soon as practicable.²⁹

In an emergency there may be no duty to be fair.³⁰ A prison warden may act immediately to avert a disturbance among the inmates.³¹ Environment officials may move swiftly to clean up a gas leak without first finding out who is responsible.³² The licence of a dangerous driver may be suspended summarily to protect the public.³³ In volatile labour disputes, a labour relations board may move quickly.³⁴ Usually there is a statutory right to be heard soon after an emergency order has been made or after investigation.

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Where the authority granted is to investigate and report, but not decide, there may be a limited duty to act fairly. The extent of the duty turns on the role of the investigation in the decision-making process and on the degree that the rights of a person may be finally decided.³⁵ An investigation that cannot result in a decision, other than a decision to commence proceedings, attracts the fewest procedural requirements because the subsequent proceeding will provide the opportunity to be heard.³⁶ In these investigations, fairness may require no more than that a person to be questioned be permitted to be accompanied by counsel and be told the subjects on which questions will be asked.³⁷ A suspect is not entitled to be present when other witnesses are questioned.³⁸

There is no right to be heard before a decision is made to hold a hearing. A proposed respondent need not be given an opportunity to respond to allegations prior to the issuance of a notice of hearing.³⁹

However, if an adverse decision may result from the investigator's recommendation with no opportunity to make representations to the decision maker, a higher level of disclosure by the investigator and an opportunity to make submissions to the investigator may be required⁴⁰ and the investigator's report should fairly and accurately set out the facts and the representations of the parties to facilitate an informed decision.⁴¹ Provided procedural fairness was accorded prior to the recommendation, the decision maker need not provide any further opportunity before accepting the recommendation.⁴² If the decision maker chooses not to act in accordance with the investigator's recommendation, the parties affected should be advised of the reasons and given an opportunity to respond.⁴³ In Ontario, an investigator, whose recommendation does not bind the decision maker, need not comply with the *SPPA*.⁴⁴

An adjudicator that decides a dispute between two parties is expected to accord both parties equivalent procedural rights. It must "hear both sides" before deciding. A tribunal whose primary duty is to mediate rather than decide a dispute may be permitted more procedural leeway, though it is expected to act fairly between the parties.⁴⁵

If a decision is based entirely on material and information supplied by the person subject to it, there may be no duty to notify that person and invite submissions before an adverse decision is made.⁴⁶ An applicant denied a benefit or licence may reapply with more information but, if there is no change in circumstances, it may be dismissed without the procedural formalities followed when a new application is received.⁴⁷ Before revoking the benefit, there may be a duty to state the grounds and provide an opportunity to respond.⁴⁸ If the statute grants an applicant an opportunity to be heard before an application for a benefit is refused, a similar opportunity must also be offered before the benefit is revoked.⁴⁹

In cases involving public safety and animal health, the requirement of fairness may be met by conducting a reliable test or an inspection.⁵⁰ In some cases, the person affected may present submissions as to the adequacy of the testing procedures and the reliability of the test results.⁵¹

2.

Nature of the Statutory Scheme

The common law right to procedural fairness cannot override procedure prescribed by statute. In the case of conflict, the statutory procedure governs. The common law duty to be fair may be applied only where the statute is silent as to the procedure to be followed.⁵²

In the few administrative proceedings to which section 7 of the *Charter* applies, the principles of fundamental justice, which are substantially the same as the common law duty of fairness, prevail over the statute, subject to the reasonable limits test in section 1 of the *Charter*.⁵³ Similarly, the *Canadian Bill of Rights* may be applied to declare inoperative a federal statutory procedural rule that is contrary to the duty of fairness.⁵⁴

The duty of fairness is not a single concept to be universally applied. It must be consonant with the statutory

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objectives and the role of the particular decision within the statutory scheme, and be informed by the institutional constraints on the tribunal, such as limited resources and large caseloads.⁵⁵ The procedural requirements may be higher if the function of the decision maker, within the statutory context as a whole, is to adjudicate disputes. They may be lower if the function is primarily one of managing competing interests in the regulatory field or developing regulatory policy, even though the decision affects one person more than others.⁵⁶ If the main purpose is to serve the public interest, even though the decision may be directed at an individual, the procedural requirements may be lower.⁵⁷

Procedural constraints should not frustrate a tribunal's ability to carry out its statutory mandate.⁵⁸ Before a new procedural requirement is imposed, its impact on cost or on delay in the decision-making process, and any resulting diversion of resources, should be considered when determining whether it is necessary or whether the duty of fairness can be met less expensively and more efficiently.⁵⁹

A right to a full oral hearing is a right to one hearing. If the statute provides for several levels of appeal or review by different decision makers, the full oral hearing need be granted only once. The other decisions, either before or after the oral hearing, may be made on a written record, supplemented as appropriate in the circumstances.⁶⁰

The B.C. *ATA* authorizes any combination of written, electronic and oral hearings.⁶¹ The Ontario *SPPA* grants adjudicative tribunals the option of holding an oral hearing, a written hearing (unless there is good reason for not holding the hearing in writing) or an electronic hearing (unless it would cause a party significant prejudice).⁶² Electronic hearings may be held via telephone or internet and are convenient, especially for short hearings involving parties at a geographical distance, because of travel costs.⁶³

Some regulatory functions, such as inspections, have been privatized by statute or by contract. To the extent that a private entity exercises statutory powers so as to affect the rights of an individual, the duty of fairness applies. When the Crown is dissatisfied with the performance of regulatory functions by a contractor and cancels or refuses to renew the contract, the dispute is governed by the law of contract, but for one exception where a key term of the contract is that the regulatory functions be performed by an accredited person and the contract is cancelled because of dissatisfaction with the performance of that accredited person. The accredited person has a right to procedural fairness before the accreditation is cancelled.⁶⁴ In contrast, the dismissal of a government employee is governed by the law of contract.⁶⁵ The extent to which the Crown's exercise of a contractual right is governed by the duty of fairness turns on the extent to which the contractual obligations are governed by statute.⁶⁶

3.

Importance of the Decision to the Person Affected

The right to procedural fairness arises if the statutory purpose is to decide the substantive legal rights, interests or privileges of a person and the decision may have serious adverse consequences for those rights. At the high end, a risk to individual life attracts a high level of procedural fairness.⁶⁷ At the low end, neither a reputational interest nor a desire to receive government funding is sufficient to give rise to a duty of procedural fairness.⁶⁸

A decision to deprive an individual of liberty may warrant an oral hearing, especially if it turns on issues of credibility.⁶⁹ There are degrees of liberty. Segregation of an inmate from the general prison population is a further restriction on liberty, and the inmate is entitled to a hearing that may be informal but must be fair.⁷⁰ However, in prison emergencies, an inmate may be segregated from other inmates without prior notice or an oral hearing. Once the emergency has passed, the inmate should be advised of the reasons for segregation and be given an opportunity to make representations before a decision is made to continue the segregation.⁷¹ In an emergency there may be no duty to act fairly before transferring an inmate from one prison to another.⁷² A deprivation of a conditional liberty such as parole is accorded greater procedural rights than a discretionary refusal to grant parole. A parolee may be entitled to an oral hearing when parole is revoked, but an applicant for parole may not.⁷³

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A child should not be permanently removed from parental custody without giving the parents reasons and an opportunity to respond.⁷⁴

Title to property is protected by comprehensive statutory procedural rights governing expropriation, leaving little room for the common law. A person whose property is being expropriated has greater rights than do objecting neighbours⁷⁵ but the public interest purposes for the expropriation may prevail over the owner's private property interests.⁷⁶ Decisions restricting an owner's use of a specific parcel of land may attract more procedural rights than a more general zoning by-law.⁷⁷

A full oral hearing has been required when expelling a member for cause from a profession⁷⁸ or a union⁷⁹ but a discipline proceeding is not a criminal trial and criminal process is not appropriate.⁸⁰ A prescribed automatic licence suspension for failure to comply with mandatory requirements or after a criminal conviction does not attract procedural rights.⁸¹ Before membership in a profession is refused on the grounds of lack of good character, the applicant need only be informed of the concerns and given an opportunity to respond in writing.⁸²

Not all licensed employment attracts the same procedural rights. Persons who have spent years training to qualify to practise a profession are entitled to greater procedural protections than licensees with fewer educational qualifications.⁸³ Before revoking a licence for cause, advance notice of the issues and a meeting to fully discuss them may be required.⁸⁴ Where the purpose of licensing is public safety, there may be fewer procedural rights.⁸⁵ Other decisions affecting an individual's livelihood, such as revocation of security clearance, attract minimal procedural rights.⁸⁶ Most licences are issued for a fixed term and the licensee must apply for renewal and pay a prescribed fee. The licensing body need not give notice of the expiry of a licence or of the non-receipt of an application for renewal⁸⁷ or of revocation for non-payment of fees.⁸⁸ The only procedural right afforded an applicant for a licence or other approval may be the right to submit an application and have it considered.⁸⁹

Expulsion of an individual from membership in a voluntary association attracts no duty of fairness unless the individual's livelihood or property rights are affected. If these rights are affected, the individual must be given advance notice of the cause for the proposed expulsion and an opportunity to respond to the allegations.⁹⁰

4.

Legitimate Expectations of the Parties

A tribunal may reasonably be expected to follow the same procedures it has followed in the past,⁹¹ provided the evidence of past practice is clear and unequivocal,⁹² that it has been the tribunal's common practice, is directly applicable in the circumstances and the persons seeking to enforce it knew of it and relied on it,⁹³ and it does not conflict with statutory requirements.⁹⁴

An adjudicator is not expected to rule in advance on procedural or evidentiary questions that may arise at a hearing⁹⁵ but it would be unfair to depart from that pronounced in an advance ruling or procedural guidelines in terms that are clear, unambiguous and unqualified.⁹⁶ Similarly, a clear and unequivocal promise to consult certain persons before making the decision gives those persons a legitimate expectation that they will be consulted, even if they have no statutory or other right to be consulted.⁹⁷ An offer to hear a party orally, when not required, does not confer a right to a full oral hearing with witnesses but only a right to make verbal submissions.⁹⁸

5.

Procedure Chosen by the Tribunal

Tribunals are given latitude in setting their own procedure. The courts are careful not to place decision makers in a

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procedural straitjacket. As long as the procedure adopted by a tribunal treats those who come before it fairly, a court will not intervene.⁹⁹

Costs and efficiency are relevant factors when determining fair procedure. Tribunals that process a high volume of cases may have production targets.¹⁰⁰ They may screen out complaints that lack sufficient evidentiary basis to proceed to a hearing,¹⁰¹ provided they have statutory authority.¹⁰² In an individual case, the benefits of a procedure may be weighed against its costs.¹⁰³ There is a public interest in containing administrative costs and in expeditious decision making. A tribunal may manage a case so as to make the parties focus on the essential issues¹⁰⁴ or it may conduct a hearing where none is required if it believes this is necessary to make a decision in a difficult case.¹⁰⁵ A tribunal may process applications on a “first come, first served” basis.¹⁰⁶ A tribunal may process many similar cases by first adjudicating a “test case” to establish an analytical approach and findings of general facts to be considered by, but not binding on, subsequent panels provided the parties in later cases have a right to dispute the analysis and findings.¹⁰⁷

A requirement to hold a hearing does not mandate the adversarial process except where required by statute.¹⁰⁸ A tribunal may choose an adversarial or an inquisitorial process or something in-between. An inquisitorial process may be appropriate to process efficiently and fairly a high volume of cases in which parties are often unrepresented, and may be used even if they are represented.¹⁰⁹ If the issue to be decided turns on expert evidence, the tribunal may restrict the evidence to that of the experts and allow the experts to question each other.¹¹⁰

Footnote(s)

- 1 *Martineau v. Matsqui Institution*, [1979] S.C.J. No. 121.
- 2 It has been variously expressed as “the right to be heard”, “the rules of natural justice”, “the duty to act judicially” and “*audi alterem partem*” (the duty to hear both sides).
- 3 *Nicholson v. Haldimand-Norfolk (Regional) Police Commissioners*, [1978] S.C.J. No. 88.
- 4 *Gill v. Canada (Deputy Commissioner Correctional Service)*, [1989] F.C.J. No. 70 (F.C.A.); *Haghighi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 854 (F.C.A.).
- 5 *Ironside v. Alberta (Securities Commission)*, [2009] A.J. No. 376 at para. 107 (Alta. C.A.).
- 6 *Papin-Shein c. Cytrynbaum*, [2008] J.Q. no 12176 (Que. C.A.); *Nova Scotia (Attorney General) v. Ultramar Canada Inc.*, [1995] F.C.J. No. 1160 at para. 52 (F.C.T.D.).
- 7 *Enterlake Air Services Ltd. v. Bissett Air Services Ltd.*, [1991] M.J. No. 382 (Man. Q.B.).
- 8 *Canada (Attorney General) v. Mavi*, [2011] S.C.J. No. 30.
- 9 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at para. 32.
- 10 *Sexsmith v. Canada (Attorney General)*, [2021] F.C.J. No. 547 (F.C.A.); *B. (K.) (Litigation guardian of) v. Toronto District School Board*, [2008] O.J. No. 475 (Ont. Div. Ct.).
- 11 *Cannella v. Toronto Transit Commission*, [1999] O.J. No. 2282 (Ont. Div. Ct.).
- 12 *McLeod v. Alberta Securities Commission*, [2006] A.J. No. 939 at para. 39 (Alta. C.A.), leave to appeal refused [2006] S.C.C.A. No. 380.
- 13 Round table discussion met duty of fairness: *Atlantic Collection Agency Ltd. v. Nova Scotia (Service Nova Scotia and Municipal Relations)*, [2006] N.S.J. No. 204 (N.S.S.C.); did not: *Kelly v. New Brunswick (Provincial Planning Appeal Board)*, [1984] N.B.J. No. 291 (N.B.Q.B.).
- 14 *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] S.C.J. No. 27 at paras. 45-46.
- 15 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at paras. 21-28, 30.

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- 16 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at para. 23; *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] S.C.J. No. 59.
- 17 *Canada (Attorney General) v. Inuit Tapirisat of Canada*, [1980] S.C.J. No. 99; *Idziak v. Canada (Minister of Justice)*, [1992] S.C.J. No. 97; *Canadian Assn. of Regulated Importers v. Canada (Attorney General)*, [1994] F.C.J. No. 1 (F.C.A.); *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] S.C.J. No. 59; *Dairy Farmers of Ontario v. Denby*, [2009] O.J. No. 4474 (Ont. Div. Ct.); *Newfoundland and Labrador (Consumer Advocate) v. Newfoundland and Labrador (Public Utilities Board)*, [2005] N.J. No. 83 (N.L.T.D.).
- 18 *Pembroke Civic Hospital v. Ontario (Health Services Restructuring Commission)*, [1997] O.J. No. 3142 (Ont. Div. Ct.); *Chinatown & Area Business Assn. v. Canada (Attorney General)*, [2019] F.C.J. No. 220 (F.C.); *Penner v. British Columbia (Ministry of Forests, Lands & Natural Resource Operations)*, [2018] B.C.J. No. 781 (B.C.S.C.); *Newfoundland and Labrador (Consumer Advocate) v. Newfoundland and Labrador (Public Utilities Board)*, [2005] N.J. No. 83 (N.L.T.D.).
- 19 *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] S.C.J. No. 27; *Whitley v. United States of America*, [1994] O.J. No. 2478 (Ont. C.A.), affd [1996] S.C.J. No. 25; *Janssen inc. c. Québec (Ministre de la Santé et des Services sociaux)*, [2019] J.Q. no 610; *Sovereign Life Insurance Co. v. Canada (Minister of Finance)*, [1997] F.C.J. No. 1022 (F.C.T.D.).
- 20 *Friends of the Regina Public Library Inc. v. Regina (Public Library Board)*, [2004] S.J. No. 250 (Sask. C.A.); *Potter v. Halifax Regional School Board*, [2002] N.S.J. No. 297 (N.S.C.A.); *Maple Ridge (District) v. Thornhill Aggregates Ltd.*, [1998] B.C.J. No. 1485 at paras. 29-30 (B.C.C.A.); *Vanderkloet v. Leeds & Grenville County Board of Education*, [1985] O.J. No. 2605 (Ont. C.A.).
- 21 *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] S.C.J. No. 45; *Homex Realty and Development Co. v. Wyoming (Village)*, [1980] S.C.J. No. 109.
- 22 *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006] S.C.J. No. 5; *Community Assn. of New Yaletown v. Vancouver (City)*, [2015] B.C.J. No. 1005 (B.C.C.A.), leave to appeal refused [2015] S.C.C.A. No. 244; *Potter v. Halifax Regional School Board*, [2002] N.S.J. No. 297 (N.S.C.A.).
- 23 *Gardner v. Williams Lake (City)*, [2006] B.C.J. No. 1389 (B.C.C.A.); *Potter v. Halifax Regional School Board*, [2002] N.S.J. No. 297 (N.S.C.A.).
- 24 *Thomas v. Edmonton (City)*, [2016] A.J. No. 277 (Alta. C.A.).
- 25 *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006] S.C.J. No. 5 at paras. 55-57.
- 26 *Haghighi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 854 at para. 28 (F.C.A.).
- 27 *Canada (Minister of National Revenue) v. Coopers and Lybrand Ltd.*, [1978] S.C.J. No. 97; *Pintendre Autos Inc. c. Québec (Procureur général)*, [1998] J.Q. no 2184 (Que. C.A.).
- 28 *Scott v. College of Massage Therapists of British Columbia*, [2016] B.C.J. No. 814 (B.C.C.A.); *Farbeh v. College of Pharmacists of British Columbia*, [2009] B.C.J. No. 1640 (B.C.S.C.); *Petroleum Products Act (P.E.I.) (Re)*, [1986] P.E.I.J. No. 118 (P.E.I.C.A.).
- 29 *Menon v. College of Physicians and Surgeons of New Brunswick*, [2007] N.B.J. No. 270 (N.B.Q.B.).
- 30 *Durham (Regional Municipality) Police Service v. Ontario Civilian Police Commission*, [2020] O.J. No. 1490 (Ont. Div. Ct.).
- 31 *Cardinal v. Kent Institution*, [1985] S.C.J. No. 78; *Morin v. Saskatchewan (Director of Corrections)*, [1982] S.J. No. 547 (Sask. C.A.); *Bruce v. Canada (Commissioner of Corrections)*, [1979] F.C.J. No. 185 (F.C.T.D.).
- 32 *Mac's Convenience Stores Inc. v. Ontario (Minister of Environment)*, [1984] O.J. No. 3338 (Ont. Div. Ct.).
- 33 *Hundal v. British Columbia (Superintendent of Motor Vehicles)*, [1985] B.C.J. No. 3046 (B.C.C.A.).
- 34 *Tomko v. Nova Scotia (Labour Relations Board)*, [1975] S.C.J. No. 111; *Amalgamated Transit Union, Local 113 v. Ontario (Labour Relations Board)*, [2007] O.J. No. 3907 (Ont. Div. Ct.); *International Brotherhood of Electrical Workers, Local 1739 v. International Brotherhood of Electrical Workers*, [2007] O.J. No. 2460 (Ont. Div. Ct.).
- 35 *Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] S.C.J. No. 7 at para. 80; *Seaway Trust Co. v. Ontario (No. 2)*, [1983] O.J. No. 257 (Ont. H.C.J.); *Haber v. Wellesley Hospital (Medical Advisory Committee)*, [1986] O.J. No. 857 (Ont. Div. Ct.), affd [1988] O.J. No. 3023 (Ont. C.A.).

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- 37** *Ontario (Securities Commission) v. Biscotti*, [1988] O.J. No. 1115 (Ont. H.C.J.).
- 38** *Irvine v. Canada (Restrictive Trade Practices Commission)*, [1987] S.C.J. No. 7 at para. 96.
- 39** *Puar v. Assn. of Professional Engineers and Geoscientists*, [2009] B.C.J. No. 2186 (B.C.C.A.); *Bailey v. Saskatchewan Registered Nurses' Assn.*, [1994] S.J. No. 462 (Sask. Q.B.), revd [1995] S.J. No. 755 (Sask. C.A.); *Kindler v. Canada (Minister of Employment and Immigration)*, [1987] F.C.J. No. 507 (F.C.A.); *Varity Corp. v. Ontario (Director of Employment Standards Branch)*, [1989] O.J. No. 1837 (Ont. Div. Ct.); no procedural rights before a decision to reconsider: *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, [2021] B.C.J. No. 258 (B.C.C.A.); *Barnes v. Ontario (Social Benefits Tribunal)*, [2009] O.J. No. 3096 (Ont. Div. Ct.).
- 40** *Fraternité Inter-Provinciale des Ouvriers en Électricité v. Quebec (Office de la Construction)*, [1983] J.Q. no 394, 148 D.L.R. (3d) 626 at 640 (Que. C.A.); *Abel v. Ontario (Advisory Review Board)*, [1980] O.J. No. 3878 (Ont. C.A.); *Canadian Tobacco Manufacturers' Council v. National Farm Products Marketing Council*, [1986] F.C.J. No. 155 (F.C.A.); *Saskatchewan Teachers' Federation v. Munro*, [1992] S.J. No. 675 (Sask. C.A.).
- 41** *Braeside Farms Ltd. v. Ontario (Treasurer)*, [1978] O.J. No. 3458 at para. 33 (Ont. Div. Ct.).
- 42** *Barriolhet v. Justices of the Peace Review Council*, [2011] O.J. No. 2650 (Ont. Div. Ct.).
- 43** *Cardinal v. Kent Institution*, [1985] S.C.J. No. 78; *Al Yamani v. Canada (Solicitor General)*, [1995] F.C.J. No. 1453 at paras. 75-77 (F.C.T.D.).
- 44** *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 3(2)(g). See *Emerson v. Law Society of Upper Canada*, [1983] O.J. No. 3287 (Ont. H.C.J.).
- 45** *Tomko v. Nova Scotia (Labour Relations Board)*, [1975] S.C.J. No. 111; *Turbo Resources Ltd. v. Rotchell*, [1985] S.J. No. 121 (Sask. Q.B.).
- 46** *Scarborough Community Legal Services v. Canada (Minister of National Revenue)*, [1985] F.C.J. No. 166 (F.C.A.); *Windsor v. Nova Scotia (Teachers' Pension Commission)*, [1980] N.S.J. No. 614 (N.S.S.C.).
- 47** *Pugliese v. British Columbia (Registrar of Mortgage Brokers, Financial Services Tribunal)*, [2008] B.C.J. No. 503 (B.C.C.A.); *Bonavista (Town) v. Bonavista Local Board of Appeal*, [1995] N.J. No. 212 (Nfld. C.A.).
- 48** *Renaissance International v. Canada (Minister of National Revenue)*, [1982] F.C.J. No. 187 (F.C.A.); *Webb v. Ontario Housing Corp.*, [1978] O.J. No. 3378 (Ont. C.A.); *Mercer v. Newfoundland and Labrador Housing Corp.*, [1984] N.J. No. 189 (Nfld. T.D.).
- 49** *Desjardins v. Bouchard*, [1982] F.C.J. No. 238 (F.C.A.).
- 50** *Miel Labonté Inc. v. Canada (Attorney General)*, [2006] F.C.J. No. 247 (F.C.); *Bevan v. Ontario Society for the Prevention of Cruelty to Animals*, [2007] O.J. No. 645 (Ont. C.A.); *Barcrest Farms Inc. v. Canada (Minister of Agriculture)*, [1982] F.C.J. No. 79 (F.C.T.D.); *River Valley Poultry Farm Ltd. v. Canada (Attorney General)*, [2009] O.J. No. 1605 (Ont. C.A.), leave to appeal refused [2009] S.C.C.A. No. 259; *Ucrainet v. British Columbia (Superintendent of Motor Vehicles)*, [2016] B.C.J. No. 971 (B.C.C.A.).
- 51** *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, [2015] S.C.J. No. 46; *Gregory v. British Columbia (Superintendent of Motor Vehicles)*, [2018] B.C.J. No. 31 (B.C.C.A.); *Griffin v. Canada (Agriculture Canada, Inspections Division)*, [1989] F.C.J. No. 300 (F.C.T.D.); *Archer (c.o.b. Fairburn Farm) v. Canada (Canadian Food Inspection Agency)*, [2001] F.C.J. No. 46 (F.C.T.D.).
- 52** *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] S.C.J. No. 17.
- 53** *Singh v. Canada (Minister of Employment and Immigration)*, [1985] S.C.J. No. 11 at paras. 25, 33, 56; *Gallant v. Canada (Deputy Commissioner Correctional Service)*, [1989] F.C.J. No. 70 (F.C.A.); *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] S.C.J. No. 66; *Hundal v. British Columbia (Superintendent of Motor Vehicles)*, [1985] B.C.J. No. 3046 (B.C.C.A.).

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- 54** *Air Canada v. Canada (Attorney General)*, [2003] J.Q. no 21 (Que. C.A.); the court, without discussion, granted a corporation the benefit of a right which the *Canadian Bill of Rights* grants only to individuals. *Hassouna v. Canada (Minister of Citizenship and Immigration)*, [2017] F.C.J. No. 544 (F.C.).
- 55** *Fortis Properties Corp. v. United Steelworkers of America, Local 1-306*, [2007] N.B.J. No. 68 at paras. 5-6 (N.B.C.A.).
- 56** *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] S.C.J. No. 59; *Society Promoting Environmental Conservation v. Canada (Attorney General)*, [2003] F.C.J. No. 861 (F.C.A.); *Canadian Restaurant and Foodservices Assn. v. Canadian Dairy Commission*, [2002] O.J. No. 3685 (Ont. Div. Ct.).
- 57** *British Columbia (Securities Commission) v. Pacific International Securities Inc.*, [2002] B.C.J. No. 1480 (B.C.C.A.).
- 58** *Telus Communications Inc. v. Telecommunications Workers Union*, [2005] F.C.J. No. 1253 at para. 42 (F.C.A.); *Mensingher v. Canada (Minister of Employment and Immigration)*, [1987] 1 F.C. 59 (F.C.T.D.); *Khan v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1699 at para. 32 (F.C.A.).
- 59** *Haghighi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 854 at para. 28 (F.C.A.); *Canada (Attorney General) v. Mavi*, [2011] S.C.J. No. 30 at para. 40.
- 60** *St-Pie (Municipalité de) c. Commission de protection du territoire agricole du Québec*, [2009] J.Q. no. 15512 (Que. C.A.), leave to appeal refused [2010] S.C.C.A. No. 54.
- 61** *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 36.
- 62** *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, ss. 5.1, 5.2; *Harry v. Ontario (Registrar General)*, [2014] O.J. No. 506 (Ont. Div. Ct.).
- 63** *Bur-Met Contracting Ltd. v. Carpenters District Council*, [2014] O.J. No. 1377 (Ont. Div. Ct.).
- 64** *Société de l'assurance automobile du Québec v. Cyr*, [2008] S.C.J. No. 13; as the Court found the duty of fairness in a statutory requirement, it is not clear whether it would be imposed in other jurisdictions. *Strauss v. British Columbia (Minister of Public Safety and the Solicitor General)*, [2019] B.C.J. No. 1023 (B.C.C.A.).
- 65** *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at paras. 74, 81-84, 117, 119.
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- 67** *Sexsmith v. Canada (Attorney General)*, [2021] F.C.J. No. 547 (F.C.A.).
- 68** *Canadian Arab Federation v. Canada (Minister of Citizenship and Immigration)*, [2015] F.C.J. No. 957 (F.C.A.), leave to appeal refused [2015] S.C.C.A. No. 437; *Black v. Advisory Council for the Order of Canada*, [2012] F.C.J. No. 1309 (F.C.), affd [2013] F.C.J. No. 1284 (F.C.A.); *Mital v. Canada (Minister of Health)*, [2015] F.C.J. No. 754 (F.C.), affd [2016] F.C.J. No. 242 (F.C.A.), leave to appeal refused [2016] S.C.C.A. No. 156.
- 69** *Singh v. Canada (Minister of Employment and Immigration)*, [1985] S.C.J. No. 11 at paras. 58-59; *Joly v. Canada (Attorney General)*, [2014] F.C.J. No. 1315 (F.C.).
- 70** *Cardinal v. Kent Institution*, [1985] S.C.J. No. 78; *Martineau v. Matsqui Institution*, [1979] S.C.J. No. 121.
- 71** *Cardinal v. Kent Institution*, [1985] S.C.J. No. 78; *Martineau v. Matsqui Institution*, [1979] S.C.J. No. 121.
- 72** *Morin v. Saskatchewan (Director of Corrections)*, [1982] S.J. No. 547 (Sask. C.A.); *Gill v. Canada (Correctional Service)*, [1989] F.C.J. No. 70 (F.C.A.).
- 73** *MacDonald v. Canada (National Parole Board)*, [1986] 3 F.C. 157 at 174-75 (F.C.T.D.).
- 74** *Beson v. Newfoundland (Director of Child Welfare)*, [1982] S.C.J. No. 95.
- 75** *Society Promoting Environmental Conservation v. Canada (Attorney General)*, [2003] F.C.J. No. 861 (F.C.A.).
- 76** *Higgins v. Nova Scotia (Attorney General)*, [2013] N.S.J. No. 475 (N.S.C.A.), leave to appeal refused [2013] S.C.C.A. No. 444.
- 77** *Homex Realty and Development Co. v. Wyoming (Village)*, [1980] S.C.J. No. 109; *Kelly v. New Brunswick (Provincial Planning Appeal Board)*, [1984] N.B.J. No. 291 (N.B.Q.B.).
- 78** *Emerson v. Law Society of Upper Canada*, [1983] O.J. No. 3287 (Ont. H.C.J.).

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- 79** *Rees v. United Assn. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 527*, [1983] O.J. No. 3152 (Ont. Div. Ct.).
- 80** *Béliveau v. Barreau du Québec*, [1992] J.Q. no 1208 (Que. C.A.).
- 81** *Green v. Law Society of Manitoba*, [2017] S.C.J. No. 20; *Occéan c. Société de l'assurance automobile du Québec*, [2011] J.Q. no 3445 (Que. S.C.).
- 82** *Simlote v. Assn. of Professional Engineers, Geologists and Geophysicists Alberta*, [1983] A.J. No. 810 (Alta. Q.B.).
- 83** *British Columbia (Securities Commission) v. Pacific International Securities Inc.*, [2002] B.C.J. No. 1480 (B.C.C.A.).
- 84** *Baiton Enterprises Ltd. v. Saskatchewan (Liquor Licensing Commission)*, [1984] S.J. No. 871 (Sask. Q.B.).
- 85** *Thomson v. Alberta (Transportation and Safety Board)*, [2003] A.J. No. 1115 (Alta. C.A.); *Raichura v. Manitoba (Registrar of Motor Vehicles)*, [1992] M.J. No. 259 (Man. C.A.); *Edwards (c.o.b. Seleh Special Care Home) v. New Brunswick (Minister of Health and Community Services)*, [2000] N.B.J. No. 217 (N.B.Q.B.), affd [2000] N.B.J. No. 438 (N.B.C.A.).
- 86** *Dorélas v. Canada (Transport)*, [2019] F.C.J. No. 223 (F.C.).
- 87** *Eiba v. Canada (Attorney General)*, [2004] F.C.J. No. 288 (F.C.); *F. Hoffmann-La Roche AG v. Canada (Commissioner of Patents)*, [2003] F.C.J. No. 1760 (F.C.).
- 88** *Gelineau v. Canadian Board for Certification of Prosthetists and Orthotists*, [2003] M.J. No. 162 (Man. Q.B.).
- 89** *Motta v. Canada (Attorney General)*, [2000] F.C.J. No. 27 (F.C.T.D.); *Cao v. Saskatchewan (Ministry of the Economy)*, [2021] S.J. No. 188 (Sask. Q.B.).
- 90** *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] S.C.J. No. 87.
- 91** *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] S.C.J. No. 45 at para. 10.
- 92** *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] S.C.J. No. 28 at para. 133; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013] S.C.J. No. 36 at paras. 94-102.
- 93** *Attaran v. University of British Columbia*, [1998] B.C.J. No. 115 at paras. 60-91 (B.C.S.C.); *Humber Heights of Etobicoke Ratepayers Inc. v. Toronto District School Board*, [2003] O.J. No. 1381 (Ont. Div. Ct.).
- 94** *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] S.C.J. No. 28 at para. 131; *dela Fuente v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 774 at paras. 19-20 (F.C.A.), leave to appeal refused [2006] S.C.C.A. No. 291; *DBC Marine Safety Systems Ltd. v. Canada (Commissioner of Patents)*, [2007] F.C.J. No. 1500 (F.C.), affd [2008] F.C.J. No. 1268 (F.C.A.).
- 95** *Engineering Students Society, University of Saskatchewan v. Saskatchewan (Human Rights Commission)*, [1983] S.J. No. 274 (Sask. Q.B.).
- 96** *Canada (Attorney General) v. Mavi*, [2011] S.C.J. No. 30 at para. 68; *Canada (Minister of Employment and Immigration) v. Bendahmane*, [1989] F.C.J. No. 304 (F.C.A.); *C2 Ventures Inc. v. Saskatchewan (Financial and Consumer Affairs Authority)*, [2019] S.J. No. 215 (Sask. C.A.); *Gaw v. Canada (Commissioner of Corrections)*, [1986] F.C.J. No. 63 (F.C.T.D.).
- 97** *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] S.C.J. No. 137 at paras. 73-75; *Kennedy v. New Brunswick (Minister of Education)*, [2015] N.B.J. No. 251 (N.B.C.A.); *Furey v. Conception Bay Centre Roman Catholic School Board*, [1993] N.J. No. 170 (Nfld. C.A.).
- 98** *Wood v. Wetaskiwin (County)*, [2003] A.J. No. 239 (Alta. C.A.).
- 99** *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at para. 27; *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, [2007] S.C.J. No. 15 at paras. 230-231; *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] S.C.J. No. 25; *Downing v. Graydon*, [1978] O.J. No. 3539 at para. 48 (Ont. C.A.).
- 100** *Khan v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1699 at para. 32 (F.C.A.); *Irripugge v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 29 (F.C.T.D.).
- 101** *Ayotte v. Université de Moncton*, [2021] N.B.J. No. 70 (N.B.C.A.); *Green v. Nova Scotia (Human Rights Commission)*, [2011] N.S.J. No. 260 (N.S.C.A.); *Xia v. Board of Governors of Lakehead University*, [2020] O.J. No. 4378 (Ont. Div. Ct.).

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Ct.); *Yaremy v. British Columbia (Human Rights Tribunal)*, [2015] B.C.J. No. 1068 (B.C.C.A.); *Moore v. College of Physicians and Surgeons of British Columbia*, [2013] B.C.J. No. 2504 (B.C.S.C.), affd [2014] B.C.J. No. 3010 (B.C.C.A.), leave to appeal refused [2015] S.C.C.A. No. 26.

- 102** *Hamelin v. Sturgeon Lake Cree Nation*, [2018] F.C.J. No. 700 (F.C.A.); *Ahmed v. Ontario (Criminal Injuries Compensation Board)*, [2008] O.J. No. 2478 (Ont. Div. Ct.); *Yee v. Chartered Professional Accountants of Alberta*, [2020] A.J. No. 291 at para. 88 (Alta. C.A.).
- 103** *Terceira v. Labourers International Union of North America*, [2014] O.J. No. 5648 (Ont. C.A.).
- 104** *James v. British Columbia (Labour Relations Board)*, [2007] B.C.J. No. 217 (B.C.C.A.).
- 105** *Joshi v. British Columbia Veterinary Medical Assn.*, [2010] B.C.J. No. 422 (B.C.C.A.).
- 106** *462284 B.C. Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, [2019] B.C.J. No. 101 (B.C.S.C.).
- 107** *Geza v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1401 (F.C.), vard on other grounds [2006] F.C.J. No. 477 (F.C.A.).
- 108** *Nova Scotia (Director of Assessment) v. Knickle*, [2007] N.S.J. No. 449 (N.S.C.A.); *Aurora College v. Niziol*, [2010] N.W.T.J. No. 86 (N.W.T.S.C.); *Universal Workers Union, Labourers' International Union of North America, Local 183 v. Ontario (Human Rights Commission)*, [2006] O.J. No. 50 (Ont. Div. Ct.).
- 109** *Benitez v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 735 (F.C.A.), leave to appeal refused [2007] S.C.C.A. No. 391; *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 734 (F.C.A.), leave to appeal refused [2007] S.C.C.A. No. 394.
- 110** *Dale v. Tiny (Township)*, [2015] O.J. No. 6323 (Ont. Div. Ct.).

§2.23 DECISIONS AND ORDERS

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Sara Blake

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PART I PROCEEDINGS BEFORE THE TRIBUNAL

Chapter 2 TRIBUNAL PROCEDURE

§2.23 DECISIONS AND ORDERS

1.

Written Decisions

A decision may be given orally unless the statute requires the decision to be in writing.¹ The advantages of oral decisions include swifter justice for the parties and more efficient processing of cases by the tribunal.² The advantage of written decisions is that the process of deliberating and writing engages more careful analysis. If the statute requires the decision to be in writing, an oral decision has no effect until a signed written decision is delivered.³ If a written decision differs significantly from the prior oral pronouncement, the courts are not in agreement as to whether significant changes are grounds to quash the decision.⁴ Changes of mind after the oral pronouncement should be avoided because they may be unfair to parties who have acted in reliance on the oral pronouncement and may undermine confidence in the tribunal.

Most statutes do not require decision makers to sign decisions nor that they be identified. Signature by all members of the hearing panel indicates their participation in the decision by their concurrence or dissent.⁵ Disclosure of their identity aids review for bias.⁶ Whether the signature of the tribunal secretary certifying it is a decision of the tribunal is adequate has been the subject of contrary decisions.⁷

A tribunal should take care that every released decision is in final form and does not reveal alterations made in preparation of it. Members should not sign a draft decision containing errors, with instructions to correct the errors before release, because of the risk that tribunal staff, on checking the back page to see if it is signed, will release it without making the corrections.⁸ A decision that is released electronically should be in a format that does not allow recipients to see the meta-data revealing who typed which parts. Sloppiness provides fodder for allegations of bias.⁹

Decisions of federal tribunals that determine a question of law of general public importance must be released in both official languages.¹⁰

2.

Notice of Decision

Notice of the decision must be given to the parties by the tribunal. Any method that is effective is acceptable. The most expeditious and inexpensive method is by email. The B.C. *ATA* and Ontario *SPPA* require that notice of the decision be sent to the parties and prescribe an alternative procedure for giving notice by public advertisement.¹¹

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Even if the parties learn of the decision some other way, the tribunal is not relieved of its obligation to notify them.¹² Notice may be given by an officer of the tribunal.¹³ It should be sent concurrently to all parties.¹⁴ Advance notice of the date of release of a decision is not required.¹⁵ The tribunal has discretion whether to post its decisions on a website, subject to concerns that may warrant a publication ban or sealing order.¹⁶

A requirement to give public notice of decisions may be met by posting them on a website established for such notices or in a newspaper. The onus is on the public to exercise due diligence to check the website.¹⁷ Public notice must give sufficient information to enable reasonable readers to appreciate whether their interests are affected.¹⁸

3.

Time Limits to Make Decisions

Some statutes specify a time limit by which the tribunal shall make a decision.¹⁹ These time limits are not mandatory because the statutory mandate must be fulfilled and “the right of a party should not be lost or in any way prejudiced as a result of dilatory conduct on the part of a board over which it has little or no control”.²⁰ Their purpose is to encourage tribunals to act with dispatch. A strict time limit may be met by issuing a decision with brief reasons followed later by more extensive reasons provided the brief reasons state the intention to do this.²¹

If no time limit is stipulated, tribunals should endeavour to make decisions within a reasonable time. Tribunal statements that applications will typically be decided within a specified time are unenforceable.²² If the tribunal is tardy, a party may apply to court for an order compelling the tribunal to decide²³ but may not dictate a deadline to the tribunal,²⁴ nor sue for damages suffered due to the delay.²⁵ If the tribunal requires more information to make a decision, reasonable delay to obtain it may be acceptable.²⁶ If the parties’ circumstances change materially during the delay, they may ask the tribunal to reopen the hearing.²⁷ If an adjudicator takes too long deciding cases, the Chair may re-assign cases to others.²⁸

4.

Contents of Order

An order compelling a party to do or refrain from doing something must tell the party specifically what it must do. It is not sufficient to order the party to comply generally with a statute or to preserve the status quo.²⁹ The remedies ordered should be restricted to those for which notice and an opportunity to respond was given.³⁰

5.

Whether Reasons for Decision Must be Delivered

Reasons for decision are not mandatory unless required by statute.³¹ Failure to comply with a statutory duty to give reasons may require that the decision be set aside.³² **Reasons need be given only for a final decision, not for rulings that do not finally dispose of the matter.**³³ Many statutes require tribunals to give reasons only if requested by a party.³⁴ A party who makes no request cannot complain if reasons are not given.³⁵ A party’s statutory right to request reasons may not be restricted by time limits³⁶ but, if a party delays too long, the tribunal may be excused if it is unable to state reasons.³⁷ Requested reasons must be delivered without undue delay.³⁸

Even if not required, the delivery of reasons for decision is a good practice that promotes fair and transparent decision making. The exercise of writing reasons assists the tribunal to think through the issues to reach a reasonable result and reduces the chance of an arbitrary or capricious decision. Reasons can demonstrate that the issues have been carefully considered and reinforce public confidence in the judgment and fairness of the tribunal. Often, if reasons are not given, they may be discerned from the allegations and evidentiary record.³⁹ Reasons for an exercise of discretion by Cabinet or a Minister may be apparent from documents containing recommendations.⁴⁰

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Elected bodies that decide issues by way of a vote cannot give reasons for decision because each member may have different reasons for voting for or against. The record and debates often indicate the rationale for the decision.⁴¹

6.

Sufficiency of Reasons

If there is a duty to give reasons, they must explain why the tribunal reached its result. It is not sufficient to outline the evidence and argument and then state the tribunal's conclusion.⁴² Nor is it sufficient to repeat the applicable statutory provisions.⁴³ That does not reveal the rationale for a decision. The most common fault in tribunal reasons is the failure to explain "why". With respect to each conclusion of contested fact, law and policy, the reasons should state the conclusion and answer the question, "Why did the tribunal reach that conclusion?" If interpretation of the statute is contested, the reasons must explain the tribunal's interpretation with analysis of the text, context and purposes of the provisions at issue. Reasons must also explain why the material points advocated by the losing party were rejected.⁴⁴

Reasons need not be lengthy. In most cases, a few sentences explaining the rationale for each material conclusion is sufficient. Reasons need not be given on every minor point raised during the proceeding nor must reference be made to every item of evidence.⁴⁵ A tribunal that considers many applications on similar issues, may use standard form reasons or follow precedents, provided each decision is based on the facts of the case.⁴⁶ A transcript of the tribunal's deliberations is no substitute for reasons, as it reveals only musings and observations by the panel members without coherently explaining the rationale agreed to by the panel⁴⁷ and is inconsistent with the principle of deliberative secrecy.

7.

Who May Draft the Reasons for Decision?

The hearing panel should designate one of its members to draft the tribunal's reasons for decision. The reasons should not be drafted by a person who is not on the panel,⁴⁸ most certainly not by one of the parties. Reasons written by someone else are presumed to reflect the decision of that person rather than the decision of the tribunal. However, a tribunal that makes the decision itself and composes its own reasons may obtain typing, editorial and legal assistance from persons who are independent of the parties.⁴⁹ A tribunal may ask its staff to prepare summaries of the testimony but staff must not make findings or express opinions on the evidence.⁵⁰ If a hearing is not required, staff may review the materials that have been filed and prepare a report for the decision maker.⁵¹ A staff summary must fairly describe all of the relevant evidence.⁵²

Footnote(s)

- 1 *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 51; *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3, s. 7; *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 17; *Administrative Justice Act*, CQLR, c. J-3, s. 13.
- 2 *Irripugge v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 29 (F.C.T.D.).
- 3 *Pryor v. Ontario Society for the Prevention of Cruelty to Animals*, [2008] O.J. No. 470 (Ont. C.A.); *Canada (Employment and Immigration Commission) v. Dubois*, [1984] F.C.J. No. 31 (F.C.A.).
- 4 Written decision upheld: *Bowen v. Edmonton (City)*, [1977] A.J. No. 560 (Alta. C.A.); *Gagnon v. College of Pharmacists*, [1997] B.C.J. No. 1362 at para. 4 (B.C.C.A.); Quashed: *Turbo Resources Ltd. (Re)*, [1982] O.J. No. 1287 (Ont. Div. Ct.); *Sinnathamby v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 242 (F.C.).

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- 5 *Herman Motor Sales Inc. v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)*, [1980] O.J. No. 3680 (Ont. Div. Ct.); *R.D.R. Construction Ltd. v. Nova Scotia (Rent Review Commission)*, [1982] N.S.J. No. 546 at para. 27 (N.S.C.A.); *Canadian Arsenal Ltd. v. Canada (Labour Relations Board)*, [1978] F.C.J. No. 226 (F.C.A.).
- 6 *Wah Shing T.V. & Partners Ltd. v. Canada (Canadian Radio-television and Telecommunications Commission)*, [1984] F.C.J. No. 161 (F.C.T.D.).
- 7 *Emerson v. Law Society of Upper Canada*, [1983] O.J. No. 3287 at para. 69 (Ont. H.C.J.); *Zwirner v. University of Calgary*, [1977] A.J. No. 525 at para. 22 (Alta. C.A.).
- 8 *Muscillo Transport Ltd. v. Ontario (Licence Suspension Appeal Board)*, [1997] O.J. No. 3062 (Ont. Gen. Div.), affd [1998] O.J. No. 1488 (Ont. C.A.).
- 9 *DeMaria v. Law Society of Saskatchewan*, [2013] S.J. No. 292 (Sask. Q.B.), affd [2015] S.J. No. 506 (Sask. C.A.), leave to appeal refused [2015] S.C.C.A. No. 493.
- 10 *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), ss. 3, 20; *Devinat v. Canada (Immigration and Refugee Board)*, [1999] F.C.J. No. 1774 (F.C.A.).
- 11 *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 52; *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, ss. 18, 24. The *Administrative Justice Act*, CQLR, c. J-3, simply requires that the notice be sent to the parties: s. 152.
- 12 *St. Peter's Evangelical Lutheran Church v. Ottawa (City)*, [1982] S.C.J. No. 90.
- 13 *Orellana v. Canada (Minister of Employment and Immigration)*, [1979] F.C.J. No. 607 (F.C.A.).
- 14 *Crowsnest Pass (Municipality) v. Alberta (Board of Arbitration)*, [1985] A.J. No. 982 (Alta. C.A.).
- 15 *AS169988 Consultants Inc. (c.o.b. Warden Pharmacy) v. Ontario (Ministry of Health and Long-Term Care)*, [2019] O.J. No. 2516 (Ont. Div. Ct.).
- 16 *Alberta Teachers' Assn. v. Alberta (Information and Privacy Commissioner)*, [2011] A.J. No. 38 (Alta. Q.B.).
- 17 *Athabasca Chipewyan First Nation v. Alberta (Minister of Energy)*, [2009] A.J. No. 1143 at paras. 73-74 (Alta. Q.B.), affd [2011] A.J. No. 70 (Alta. C.A.), leave to appeal refused [2011] S.C.C.A. No. 128.
- 18 *World Health Edmonton Inc. v. Edmonton (City)*, [2015] A.J. No. 1325 (Alta. C.A.).
- 19 See, e.g., *Administrative Justice Act*, CQLR, c. J-3, s. 146. Section 12 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, requires the tribunal to issue a non-binding practice directive specifying the usual time period within which a final decision and reasons will be released after the hearing is completed.
- 20 *Air-Care Ltd. v. United Steelworkers of America*, [1974] S.C.J. No. 134; *Hawrish v. Law Society (Saskatchewan)*, [1998] S.J. No. 435 (Sask. C.A.); *Doucet v. British Columbia (Adult Forensic Psychiatric Services)*, [2000] B.C.J. No. 586 (B.C.C.A.); *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Assn.*, [2011] S.C.J. No. 61. *Contra: United Food and Commercial Workers, Local 1400 v. Affinity Credit Union*, [2019] S.J. No. 381 (Sask. Q.B.); *Eagleridge International Ltd. v. Newfoundland and Labrador (Minister of Environment and Conservation)*, [2018] N.J. No. 271 (N.L.S.C.).
- 21 *Lawton's Drug Stores Ltd. v. United Food and Commercial Workers Union Canada, Local 864*, [2016] N.S.J. No. 262 (N.S.S.C.).
- 22 *Big Thunder Windpark Inc. v. Ontario (Minister of the Environment)*, [2014] O.J. No. 2430 (Ont. Div. Ct.); *Jia v. Canada (Minister of Citizenship and Immigration)*, [2014] F.C.J. No. 647 (F.C.), affd [2015] F.C.J. No. 763 (F.C.A.).
- 23 *Gill v. Canada (Minister of Employment and Immigration)*, [1984] 2 F.C. 1025 (F.C.A.); *Subaharan v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1599 (F.C.); *Thomas v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2020] F.C.J. No. 127 (F.C.).
- 24 *Jackson v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 94 (F.C.); *Gomez v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2010] F.C.J. No. 697 (F.C.).
- 25 *Wu v. Vancouver (City)*, [2019] B.C.J. No. 55 (B.C.C.A.), leave to appeal refused [2019] S.C.C.A. No. 90.
- 26 *Alouette Amusement Canada Inc. v. Atlantic Lottery Corp.*, [1991] N.B.J. No. 465 (N.B.Q.B.); *Conille v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1553 (F.C.T.D.); *Merlis Investments Ltd. v. Canada (Minister of National Revenue)*, [2000] F.C.J. No. 1746 (F.C.T.D.); *Savage v. British Columbia (Superintendent of Motor*

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- Vehicles*), [2006] B.C.J. No. 2947 (B.C.C.A.); *contra: Canadian National Railway Co. v. Paterson Grain*, [2010] F.C.J. No. 1231 (F.C.A.).
- 27** *Tora Regina (Tower) Ltd. (c.o.b. Giant Tiger, Regina) v. Saskatchewan (Labour Relations Board)*, [2008] S.J. No. 198 (Sask. C.A.).
- 28** *Perreault c. Corriveau*, [2019] J.Q. no 10054 (Que. S.C.), leave to appeal refused [2020] J.Q. no 133 (Que. C.A.).
- 29** *Aamco Automatic Transmissions Inc. v. Simpson*, [1980] O.J. No. 3695 at para. 70 (Ont. Div. Ct.); *Saskatchewan Health Care Assn. v. Service Employees International Union, Local 299*, [2007] S.J. No. 240 (Sask. Q.B.). Section 50 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, requires specificity in orders for the payment of money.
- 30** *Economical Mutual Insurance Co. v. British Columbia (Information and Privacy Commissioner)*, [2013] B.C.J. No. 1060 (B.C.S.C.).
- 31** *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] S.C.J. No. 62. See for example *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 51; *Administrative Justice Act*, CQLR, c. J-3, ss. 8, 13.
- 32** *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] S.C.J. No. 65 at para. 136.
- 33** *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, [2021] B.C.J. No. 258 (B.C.C.A.); *Barnes v. Ontario (Social Benefits Tribunal)*, [2009] O.J. No. 3096 (Ont. Div. Ct.); *Canadian Imperial Bank of Commerce v. Durrer*, [2005] F.C.J. No. 1321 (F.C.).
- 34** See for example *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 17.
- 35** *Stoangi and Law Society of Upper Canada (No. 2)*, [1979] O.J. No. 4296 at para. 29 (Ont. Div. Ct.).
- 36** *Alvarez v. Canada (Minister of Manpower and Immigration)*, [1978] F.C.J. No. 89 (F.C.A.); *Singh v. Canada (Minister of Employment and Immigration)*, [1983] F.C.J. No. 1117 (F.C.A.).
- 37** *Inter-Meridian Investing Ltd. v. Alberta (Assessment Appeal Board)*, [1997] A.J. No. 833 (Alta. C.A.); *Bau v. Canada (Minister of Employment and Immigration)*, [1987] F.C.J. No. 373 (F.C.T.D.).
- 38** *Canadian Union of Public Employees, Local 1289 v. Civic Centre Corp.*, [2006] N.J. No. 299 at paras. 44-47 (N.L.T.D.).
- 39** *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] S.C.J. No. 62; *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] S.C.J. No. 103 at para. 35.
- 40** *Tsleil-Waututh Nation v. Canada (Attorney General)*, [2018] F.C.J. No. 876 at paras. 474-480 (F.C.A.), leave to appeal refused [2018] S.C.C.A. No. 465; *Alberta's Free Roaming Horses Society v. Alberta*, [2019] A.J. No. 1255 (Alta. Q.B.).
- 41** *Law Society of British Columbia v. Trinity Western University*, [2018] S.C.J. No. 32 at paras. 53-56; *Eagle's Nest Youth Ranch Inc. v. Corman Park No. 344 (Rural Municipality)*, [2016] S.J. No. 63 (Sask. C.A.).
- 42** *Northwestern Utilities Ltd. v. Edmonton (City)*, [1978] S.C.J. No. 107; *Casavant v. Saskatchewan Teachers' Federation*, [2005] S.J. No. 257 (Sask. C.A.); *Boyle v. New Brunswick (Workplace Health, Safety and Compensation Commission)*, [1996] N.B.J. No. 291 (N.B.C.A.); *VIA Rail Canada Inc. v. Lemonde*, [2000] F.C.J. No. 1685 (F.C.A.).
- 43** *Hannley v. Edmonton (City)*, [1978] A.J. No. 709 (Alta. C.A.); *567687 Saskatchewan Ltd. v. Prince Albert (City)*, [1987] S.J. No. 327 (Sask. Q.B.).
- 44** *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] S.C.J. No. 65 at para. 102-128; *Lake v. Canada (Minister of Justice)*, [2008] S.C.J. No. 23 at para. 46; *Wall v. Ontario (Independent Policy Review Office Director)*, [2014] O.J. No. 5939 (Ont. C.A.). The website of the Saskatchewan Ombudsman contains a good manual on how to write reasons called *Practice Essentials for Administrative Tribunals* (2009), online: <https://www.ombudsman.sk.ca> .
- 45** *Stelco Inc. v. British Steel Canada Inc.*, [2000] F.C.J. No. 286 (F.C.A.).
- 46** *Samkov v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1936 (F.C.T.D.).
- 47** *New Brunswick (Attorney General) v. Dominion of Canada General Insurance Co.*, [2010] N.B.J. No. 413 (N.B.C.A.).
- 48** *Adair v. Ontario (Health Disciplines Board)*, [1993] O.J. No. 2752 (Ont. Div. Ct.); *Sawyer v. Ontario Racing Commission*, [1979] O.J. No. 4236 (Ont. C.A.); *Wolfrom v. Assn. of Professional Engineers and Geoscientists of the Province of Manitoba*, [2001] M.J. No. 437 (Man. C.A.).

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- 49** *Bovbel v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 190 (F.C.A.); *Khan v. College of Physicians and Surgeons of Ontario*, [1992] O.J. No. 1725 at § E (Ont. C.A.); *Wolfrom v. Assn. of Professional Engineers and Geoscientists of the Province of Manitoba*, [2001] M.J. No. 437 (Man. C.A.).
- 50** *Armstrong v. Canada (Royal Canadian Mounted Police)*, [1998] F.C.J. No. 42 (F.C.A.).
- 51** *Silion v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1390 (F.C.T.D.).
- 52** *Tameh v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] F.C.J. No. 1111 (F.C.).

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§6.01 RIGHT OF APPEAL

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PART II REVIEW OF THE TRIBUNAL'S ACTION

Chapter 6 APPEALS FROM TRIBUNAL DECISIONS

§6.01 RIGHT OF APPEAL

Any right to appeal a tribunal's decision must be found in the statute governing that tribunal. If none is found, the tribunal's decisions cannot be appealed.¹ A tribunal cannot create a right to appeal its decisions.²

Typically, a statute grants a right of appeal from a "decision" or "order". This permits only appeals of final decisions. Interim rulings on bias or on jurisdictional, procedural or evidentiary issues may not be appealed,³ nor may a refusal to initiate a proceeding,⁴ nor a policy pronouncement.⁵ A decision is regarded as final if it finally decides the merits of the case, even though methods of implementation remain to be decided,⁶ or if it finally disposes of the case, even if it does not decide the merits.⁷ A party who was successful in the result may not appeal even though dissatisfied with the tribunal's reasons.⁸

Footnote(s)

- 1 *Maritime Natural Gas Pipeline Contractors Assn. v. New Brunswick (Board of Commissioners of Public Utilities)*, [2002] N.B.J. No. 299 (N.B.C.A.); *Newfoundland Transport Ltd. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1983] N.J. No. 92 (Nfld. C.A.).
- 2 *Medora v. New Brunswick Dental Society*, [1984] N.B.J. No. 236 (N.B.C.A.).
- 3 *Syncrude Canada Ltd. v. Alberta (Human Rights and Citizenship Commission)*, [2008] A.J. No. 614 (Alta. C.A.); *Mary and David Goodine Dairy Farm v. New Brunswick (Milk Marketing Board)*, [2002] N.B.J. No. 177 (N.B.C.A.); *Newfoundland Transport Ltd. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1983] N.J. No. 92 (Nfld. C.A.); *Maritime Natural Gas Pipeline Contractors Assn. v. New Brunswick (Board of Commissioners of Public Utilities)*, [2002] N.B.J. No. 299 (N.B.C.A.); *CHC Global Operations, a division of CHC Helicopters International Inc. v. Global Helicopter Pilots Assn.*, [2008] F.C.J. No. 1579 (F.C.A.); *Baker v. Ontario (Ministry of the Environment)*, [2013] O.J. No. 3145 (Ont. Div. Ct.).
- 4 *Communications, Energy and Paperworkers Union of Canada v. CanWest MediaWorks Inc.*, [2008] F.C.J. No. 1155 (F.C.A.); *Graywood Investments Ltd. v. Ontario Energy Board*, [2005] O.J. No. 345 at para. 28 (Ont. Div. Ct.), rev'd for other reasons [2006] O.J. No. 2030 (Ont. C.A.).
- 5 *Bell Canada v. Canada (Attorney General)*, [2016] F.C.J. No. 964 (F.C.A.).
- 6 *Ontario Human Rights Commission v. Ontario Teachers' Federation*, [1994] O.J. No. 1585 (Ont. Gen. Div.).
- 7 *Prince Albert (City) v. Riocan Holdings Inc.*, [2004] S.J. No. 337 (Sask. C.A.).
- 8 *Gauvin v. New Brunswick (Workplace Health, Safety and Compensation Commission)*, [2010] N.B.J. No. 266 (N.B.C.A.).

§6.01 RIGHT OF APPEAL

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In the Court of Appeal of Alberta

Citation: Tahn v Law Society of Alberta, 2021 ABCA 139

Date: 20210416
Docket: 2101-0052-AC
Registry: Calgary

Between:

Christopher T. Tahn

Appellant
(Applicant)

- and -

Law Society of Alberta

Respondent
(Respondent)

The Court:

**The Honourable Madam Justice Jo'Anne Streckf
The Honourable Madam Justice Elizabeth Hughes
The Honourable Madam Justice Jolaine Antonio**

Registrar's Reference to the Court

Memorandum of Judgment

The Court:

[1] The appellant seeks to appeal preliminary rulings made by a Hearing Committee of the Law Society of Alberta. The Registrar referred the appeal to a panel of this Court for preliminary determination pursuant to Rule 14.92(3) of the *Rules of Court*, and it was considered by way of written submissions. The appeal is dismissed as it is premature and this Court lacks jurisdiction to hear it under the relevant legislation.

[2] The appellant is a lawyer who is the subject of a disciplinary hearing by a Hearing Committee of the Law Society, arising out of 14 complaints with 69 citations. The hearing was scheduled to proceed over several week-long periods, one week per month from November 2020 through June 2021. The first five days of the hearing, which began on November 19, 2020, were spent addressing the appellant's preliminary applications to stay the hearing. The appellant challenged the composition of the panel, which he says should contain at least two lawyers, and submitted that undue delay and a lack of disclosure had led to a breach of procedural fairness. The Hearing Committee denied the stay on February 1, 2021.

[3] The appellant has appealed the denial of the stay on essentially the same grounds that were rejected by the Hearing Committee.

[4] The Registrar referred the appeal to a Civil Appeal Panel for summary determination pursuant to Rule 14.92(e), which provides that the Registrar may “bring to the attention of the Court for summary determination any appeal that the Registrar determines is frivolous or vexatious or significantly irregular, or that can otherwise be determined on a summary basis.”

[5] The first problem with the appellant's appeal is that the Court lacks the jurisdiction to hear it. The Court of Appeal is a statutory court, and only hears appeals prescribed by statute. As noted in *Kourtessis v M.N.R.*, [1993] 2 SCR 53 at 69-70: “Appeals are solely creatures of statute... there is no right of appeal on any matter unless provided for by the relevant legislature”. The Court of Appeal has no inherent jurisdiction to hear appeals: see *Sun v Chartered Professional Accountants of Alberta*, 2019 ABCA 495 at para 7.

[6] Section 80(1) of the *Legal Profession Act*, RSA 2000, c L-8, provides for an appeal from the decision of a Hearing Committee to the Court of Appeal in the following terms: “A person found guilty of conduct deserving of sanction may appeal to Court of Appeal any or all of the following”. As the appellant has not been “found guilty” of any conduct under the *Act* in relation to this proceeding, there is not, at this point, any jurisdiction for this Court to hear an appeal.

[7] The decisions the appellant seeks to appeal are preliminary and procedural in nature; the hearing process is ongoing and no decision has yet been made on the merits. This court has repeatedly refused to hear premature appeals. “It is neither advisable nor permissible to fragment or bifurcate an administrative process”: see *Alberta Veterinary Medical Association v Sandhu*, 2016 ABCA 336 at para 10, citing *Syncrude Canada Ltd v Alberta (Human Rights and Citizenship Commission)*, 2008 ABCA 217 at paras 8-9; see also *Partington v Institute of Chartered Accountants of Alberta (Complaints Inquiry Committee)*, 2005 ABCA 232. Those cases adopted this Court’s long-standing approach to appellate review of preliminary decisions, as described in *Workum v Alberta Securities Commission*, 2006 ABCA 181 at para 2:

As a general rule, this Court does not encourage litigation by instalments. We do not hear appeals from rulings given partway through a hearing that will not resolve any final or significant issues, except in rare and exceptional circumstances: *Robertson v. Edmonton (City) Police Service*, 2003 ABCA 279. There are many reasons for doing so, including added costs, time delays, waste of judicial resources and the need to discourage premature applications: *Paramount Energy Operating Corp. v. Alberta (Energy and Utility Board)*, 2004 ABCA 273. In most cases, disagreement with an interim ruling can be a ground for the appeal of the final decision.

[8] The appellant’s appeal is premature and without jurisdiction and is accordingly dismissed.

Written Submissions filed on April 1 and April 8, 2021

Memorandum filed at Calgary, Alberta
this 16th day of April, 2021

Strekaf J.A.

Hughes J.A.

Authorized to sign for: Antonio J.A.

Appearances:

D.A. McDermott, Q.C.
for the Appellant

S.L. Hunka
for the Respondent



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: February 10, 2022

Docket: LA21025

Type: Planning Appeal

INDEXED AS: Clare Fagan v. City of Summerside, 2022 PEIRAC 2 (CanLII)

Order No: LA22-02

BETWEEN:

CLARE FAGAN

Appellant

AND:

CITY OF SUMMERSIDE

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair
Erin T. Mitchell, Commissioner

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1. INTRODUCTION

1. This proceeding before the Commission raises questions as to the scope of jurisdiction to hear an appeal from a development decision by the City of Summerside (the “City”). This decision as to these preliminary questions is intended to clarify the appeal before the Commission and focus the parties only on matters falling within the statutory authority of the Commission. That authority is found in s. 28(1.1) of the *Planning Act*.¹

2. BACKGROUND

2. On October 26, 2021, the City approved building permit number 2021-10-0374 and development permit number 2021-9-0351 in relation to a site located at 182 Putters Street in Summerside, Prince Edward Island.
3. On October 26, 2021, Clare Fagan (the “Appellant”) filed a notice of appeal with the Commission seeking to appeal the building permit and the development permit issued by the City.
4. On November 18, 2021, the City delivered written submissions to the Commission raising questions as to the jurisdiction to hear and decide this appeal. The City asked that the appeal be dismissed summarily in writing.
5. On January 14, 2022, the Appellant delivered written submissions in reply and contended that the Commission had jurisdiction to hear and determine all of the issues raised in the appeal.

3. SUBMISSIONS FROM THE PARTIES

City

6. The City argues that the Commission does not have jurisdiction to hear an appeal from the building permit. The City points to ss. 24 and 25 of the *Building Codes Act*² which provide a distinct statutory appeal process for building permits. While the City admits that the Commission does have jurisdiction to hear an appeal from the development permit, the City submits that the notice of appeal does not raise a genuine issue requiring a hearing. According to the City, the development in question is an as-of-right development and the City had no obligation to provide notice to the Appellant.

Appellant

7. The Appellant argues that the Commission has jurisdiction to hear an appeal related to both the building permit and the development permit by virtue of s. 5(b) of the *Island Regulatory and Appeals Commission Act*.³ According to the Appellant, the appeal raises a genuine issue for consideration by the Commission, namely the lack of proper

¹ R.S.P.E.I. 1988, c. P-8.

² R.S.P.E.I. 1988, c. B-5.1.

³ R.S.P.E.I. 1988, c. I-11.

notice in relation to the development. This issue is described as a matter of fairness and due process.

4. ISSUE

8. The written submissions filed by the parties raise one main question for the Commission. That question is the proper scope of an appeal to the Commission under s. 28(1.1) of the *Planning Act*. The question raised is a legal one. There is no material dispute between the parties as to the decisions under challenge or the issues raised by the appeal. Having received written submissions from the parties, the Commission will determine this preliminary matter in writing, in accordance with the Commission's *Rules of Practice and Procedure*.

5. DISPOSITION

9. For the reasons that follow, the Commission finds that it does not have the jurisdiction to hear an appeal from the building permit. There is a different appellate process for such permits. Appeals from building permits have not been assigned to the Commission by the Legislature in s. 28(1.1) of the *Planning Act*. The only appealable decision occurred when City approved the development permit. Questions related to the procedural fairness of that development permit are permissible grounds of appeal and may properly be argued by the parties before the Commission at an oral hearing. However, the Commission does not have statutory authority to consider claims grounded in contract or misrepresentation. Those claims fall within the exclusive jurisdiction of the Supreme Court of Prince Edward Island.

6. ANALYSIS

Statutory right of appeal is limited to the development permit

10. Subsection 28(1.1) of the *Planning Act* lists the municipal decisions that may be appealed to the Commission by filing a notice of appeal. One of those appealable decisions is a development permit. A building permit is not listed. In fact, s. 1(e.1) of the *Planning Act* defines the phrase "development permit" and states expressly that it "does not include a building permit issued under the *Building Codes Act*." The decision by the City to issue the building permit is not subject to appeal to the Commission.
11. There is a separate and distinct statutory appeal process for a person aggrieved by a decision to issue a building permit under s. 10 of the *Building Codes Act*. The appeal process is set forth in ss. 24 and 25 of the *Building Codes Act*. The decision is first reviewed by the Chief Building Official. The review decision may then be appealed to the Appeal Board constituted under the *Building Codes Act*. There is no appeal to the Commission.
12. While the Appellant points to the general functions of the Commission as described in s. 5(b) of the *Island Regulatory and Appeals Commission Act*, an appeal is a statutory process. If an appeal has not been specifically assigned to the Commission, then the Commission does not have the authority to hear and determine the appeal. In this

case, only the appeal of a development permit has been assigned by the Commission by the Legislature. It is also well-settled that specific legislation prevails over the general legislation.⁴

13. In summary, the appeal before the Commission is limited to the decision by the City to approve the development permit. The Commission has no statutory jurisdiction to hear and determine any appeal in relation to the building permit issued by the City.

14. The Commission has often repeated that it is a creature of statute.⁵ It only has the authority granted by the Legislature. The Legislature has prescribed the list of municipal decisions that can be appealed to the Commission in s. 28(1.1) of the *Planning Act*. Other municipal decisions cannot be appealed to the Commission.

Genuine issue for appeal hearing

15. In its written submissions, the City admits that the Commission has jurisdiction to hear and determine an appeal of its development permit. However, the City argues that the appeal ought to be dismissed nevertheless because there is no genuine issue requiring an appeal hearing. The Commission is not satisfied that dismissal at this stage is appropriate for a number of reasons.

16. The City invokes a “genuine issue requiring an appeal hearing” threshold for the summary dismissal of an appeal in writing. This standard is similar to the one used in civil proceedings for summary judgment. However, no authority for this threshold was provided by the City. The Commission’s *Rules of Practice and Procedure* do not presently provide for the summary dismissal of appeals that do not raise a genuine issue. At present, the summary dismissal of appeals by the Commission generally occurs where a dispositive legal question is raised, such as a question of jurisdiction. There is also generally no dispute as to the material facts or any issues of credibility arising from the record. Summary dismissal will also generally be appropriate where an appeal is vexatious or otherwise an abuse of process. The Commission is, therefore, not satisfied that summary dismissal is appropriate in this case.

17. Both parties have identified notice or procedural fairness as the main issue in this appeal. It is also apparent from the written submissions that both parties disagree on this point and have submissions to make to the Commission on the merits of this issue. Matters of notice and procedural fairness, while legal issues, are often infused with facts. In the circumstances of this case, the Commission exercises its discretion to proceed with an oral hearing on the issue of notice or procedural fairness.

18. Before leaving the subject of the oral hearing, the Commission wishes to address one final matter raised by the Appellant. The notice of appeal filed by the Appellant asserts that there was an earlier representation by the developer related to views of a golf course and seeks an order from the Commission stopping development. The

⁴ *Akpe v IRAC and Grey*, 2018 PECA 5 at paras. 9-10.

⁵ See e.g. Order LA09-11, *629857 N.B. Inc. et al. v. City of Charlottetown* (November 10, 2009), at para. 14; and Order LA15-02, *G. Willikers Ltd. v. Resort Municipality* (February 12, 2015).

Commission is a statutory tribunal without any inherent jurisdiction. In other words, if the Commission has not been granted the authority to decide something by the Legislature, the Commission does not have that authority. These concerns raised by the Appellant, which relate to relief grounded in contract or misrepresentation, are outside the statutory jurisdiction of the Commission. Those issues and any potential injunctive relief fall within the exclusive jurisdiction of the Supreme Court of Prince Edward Island and are not properly before the Commission.

Parties

19. The notice of appeal in this case was filed by the Appellant within the appeal period prescribed by s. 28(1.3) of the *Planning Act*. The Appellant was the only dissatisfied person to do so and therefore the only appellant in this proceeding. In her written submissions to the Commission, the Appellant stated that the submissions were filed on behalf of herself and three other individuals. All were identified as appellants. This is not correct. The only appellant in this proceeding is the Appellant. While it is open to the Appellant to have witnesses at the oral hearing, it is not open to the Appellant to add appellants or parties to this proceeding. Only one dissatisfied person filed an appeal within the prescribed 21-day appeal period. That person was the Appellant alone.

Oral hearing

20. The appeal from the development permit issued by the City will be scheduled for an oral hearing. For the reasons above, the Commission has no jurisdiction to hear any appeal of the building permit approved by the Commission. The issue to be addressed at the oral hearing is the matter of notice or procedural fairness in relation to the development permit. The parties are directed to prepare their evidence and submissions for the Commission accordingly.

7. CONCLUSION

21. The Commission thanks the parties for their helpful submissions in writing and looks forward to an oral hearing that is focused and takes account of this preliminary decision by the Commission.

DATED at Charlottetown, Prince Edward Island, Thursday, February 10, 2022.

BY THE COMMISSION:

J. Scott MacKenzie, Q.C., Chair

M. Douglas Clow, Vice-Chair

Erin T. Mitchell, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

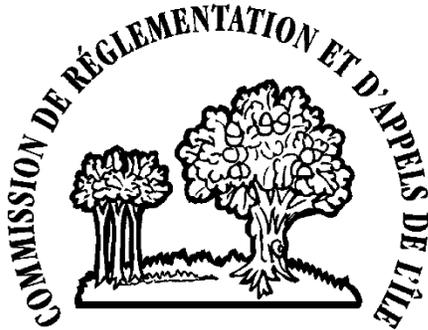
Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA15004
Order LA16-01**

IN THE MATTER of an
appeal by Michael Wheeler
of a decision of the Resort
Municipality, dated April 9,
2015.

BEFORE THE COMMISSION

on Tuesday, the 12th day of July, 2016.

J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

IN THE MATTER of an appeal by
Michael Wheeler of a decision of the Resort
Municipality, dated April 9, 2015.

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IN THE MATTER of an appeal by
Michael Wheeler of a decision of the Resort
Municipality, dated April 9, 2015.

Written Submissions

1. For the Appellant Michael Wheeler

Written submissions filed by Michael Wheeler

2. For the Respondent Resort Municipality

Written submissions filed by Jonathan M. Coady,
Solicitor for the Respondent

IN THE MATTER of an appeal by
Michael Wheeler of a decision of the Resort
Municipality, dated April 9, 2015.

Reasons for Order

1. Introduction

(1) The Appellant Michael Wheeler (the Appellant) has filed an appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the **Planning Act, R.S.P.E.I. 1988, Cap. P-8**, (the **Planning Act**). The Appellant's Notice of Appeal was received on April 29, 2015.

(2) This appeal concerns a decision of the Respondent Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the Respondent) to deny a request by the Appellant for the Respondent to amend the Respondent's Zoning and Subdivision Control (Development) Bylaw (the Bylaw).

(3) On the Appellant's Notice of Appeal, the date of the decision is indicated as April 29, 2015, the same date the Appellant filed his appeal with the Commission. A review of email printouts attached to the Notice of Appeal indicates the following:

- On April 9, 2015 at 2:44 p.m. the Appellant requested that the Respondent amend section 4.1.2 of the Bylaw so that "materials for walkways include the use of wood".
- On April 9, 2015 at 4:27 p.m. the Respondent's Administrator advised the Appellant that his email had been sent to the Respondent's Council and they would consider his comments during the Respondent's comprehensive bylaw review.
- On April 10, 2015 the Appellant requested that the Respondent consider his bylaw amendment request at the next meeting of the Respondent's Council.
- On April 13, 2015 the Respondent's Administrator advised the Appellant:

Thank you for your e-mail. This message has been sent along to the planning board and the Council they will consider your comments during the bylaw review.

(4) On May 1, 2015 Jonathan M. Coady, legal counsel for the Respondent (Counsel) filed a letter with the Commission noting that there was a preliminary issue as to jurisdiction on the basis that there had been no decision by the Respondent that falls within the prescribed list of appealable decisions found in section 28(1.1) of the **Planning Act**.

- (5) On May 8, 2015 Commission staff invited the Appellant and Counsel to file written submissions on the issue of whether the Commission had the jurisdiction to hear the appeal given the statutory wording under section 28(1.1) of the Planning Act.
- (6) Written submissions were received from the Appellant on May 21, 2015 and from Counsel on May 22, 2015 and May 29, 2015.

2. Discussion

Appellant's Submissions

- (a) The Appellant submitted that the language of the law is clear and cited section 28(1.1) of the **Planning Act**. He submitted that he is dissatisfied with a decision of the Respondent to not process his application to adopt an amendment to the Bylaw. He noted that the Respondent has effectively denied his application.
- (b) The Appellant stated that an unreasonable delay or a decision not to make a decision is in itself a decision. The Appellant also submitted that the Respondent's decision is not in the best interests of the public. The Appellant also submits that the duty of fairness includes the duty to identify the reasons for the decision and communicate those reasons clearly. He submitted that he asked the Respondent why they decided not to process the bylaw amendment request. The Appellant submitted that he did not receive an answer.

Respondent's Submissions

- (c) With respect to the Appellant's concerns requesting an answer as to why the Respondent decided not to process the bylaw amendment, Counsel filed a letter and attached emails on May 22, 2015 noting:

The enclosed email correspondence from the municipality demonstrates that the proposal from Mr. Wheeler is being considered as part of the bylaw review process that is currently underway.

- (d) In his May 29, 2015 written submission, Counsel notes at page 3, paragraphs 23 to 28 inclusive:

23. The Planning Act grants jurisdiction to the Commission to hear appeals from some, but not all, decisions of a municipality. Jurisdiction exists only where the elements set forth in section 28(1.1) of the Planning Act are present. Section 28(1.1)(b) clearly provides that the Commission can only exercise its appellate jurisdiction in the following circumstance:

*... a decision of the council of a municipality ... **to adopt an amendment to a bylaw**, including ... **an amendment to the text of a bylaw.** [emphasis added]*

24. The elements required by section 28(1.1)(b) of the Planning Act are not present in this case.

25. Also, there has been no "final reading [of] the amendment to the bylaw" within the meaning of section 28(1.4) of the Planning Act.

26. Council did not make a decision to adopt an amendment to the Bylaw.

27. Council did not make a decision to adopt an amendment to the text of the Bylaw.

28. *The fact is that no decision was made by council for the Municipality on April 29, 2015 and the bylaw review process is ongoing.*

3. Findings

(7) After a careful review of the submissions of the parties and the applicable law, the Commission finds that it has no jurisdiction to hear this appeal for the reasons that follow.

(8) A determination of the Commission's jurisdiction to hear this appeal is necessarily centred on the scope and meaning of subsection 28(1.1) of the **Planning Act**, as that subsection restricts the right of appeal to certain kinds of municipal decisions.

(9) Subsection 28(1.1) of the **Planning Act** reads as follows:

28(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality

(a) that is made in respect of an application by the person, or any other person, under a bylaw for

(i) a building, development or occupancy permit,

(ii) a preliminary approval of a subdivision,

(iii) a final approval of a subdivision; or

(b) to adopt an amendment to a bylaw, including

(i) an amendment to a zoning map established in a bylaw, or

(ii) an amendment to the text of a bylaw,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

(10) Not all municipal decisions may be appealed to the Commission. Indeed, not all municipal planning decisions may be appealed to the Commission.

(11) The Commission finds that subsection 28(1.4) of the **Planning Act** makes the legislative intent clear:

28(1.4) For greater certainty, where a person is dissatisfied by the decision of a council of a municipality to adopt an amendment to a bylaw, the 21-day period for filing a notice of appeal under this section commences on the date that the council gave final reading to the amendment to the bylaw.

(12) The Appellant requested an amendment to the Respondent's Bylaw and the Respondent advised it would consider the request, but only as part of its ongoing bylaw review process required under subsection 15.1(1) of the **Planning Act**. The Appellant was dissatisfied with this response as he wanted the amendment to be decided upon at the next meeting of the Respondent's Council. Clause 28(1.1)(b) of the **Planning Act** provides a right of appeal for municipal decisions to adopt a bylaw amendment and that amendment receives final reading as provided in Clause 28 (1.4). There is, however, no right of appeal when a municipality defers the decision or decides against amending its bylaws. Accordingly, the Commission finds it has no jurisdiction to hear this appeal.

4. Disposition

(13) The appeal is hereby dismissed on the basis the Commission has no jurisdiction to hear the appeal.

IN THE MATTER of an appeal by
Michael Wheeler of a decision of the Resort
Municipality, dated April 9, 2015.

Order

WHEREAS the Appellant Michael Wheeler appealed a decision of the Resort Municipality ;

AND WHEREAS the Commission has reviewed subsection 28(1.1) of the *Planning Act* to determine whether it has the jurisdiction to hear this appeal;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. The appeal is hereby dismissed on the basis the Commission has no jurisdiction to hear the appeal.

DATED at Charlottetown, Prince Edward Island, this 12th day of July, 2016.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) M. Douglas Clow

M. Douglas Clow, Vice-Chair

(sgd) John Broderick

John Broderick, Commissioner

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IRAC141AA(2009/11)