

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *EVR Operations Limited v. Environmental
Appeal Board*,
2026 BCSC 1078

Date: 20260611
Docket: S251098
Registry: Vancouver

Between:

EVR Operations Limited

Petitioner

And

Environmental Appeal Board and Chief Inspector of Mines

Respondents

Before: The Honourable Justice J. Walker

On judicial review from: An decision of the Environmental Appeal Board, dated
December 30, 2024 (Decision No. EAB-EMA-22-A001(a)).

Reasons for Judgment

Counsel for the Petitioner:

G. Cameron
A. Clarke, Articled Student

Counsel for the Respondent, the
Environmental Appeal Board:

R. Gage

Counsel for the Respondent, the Chief
Inspector of Mines

D. Balca
M. Butler

Place and Date of Hearing:

Vancouver, B.C.
January 9, 2026

Place and Date of Judgment:

Vancouver, B.C.
June 11, 2026

Table of Contents

INTRODUCTION	3
THE LEGISLATIVE SCHEME	4
Appeals	5
Contraventions	6
The Relevant Definitions	6
BACKGROUND FACTS	7
The Delegate's Decision	8
The Board's Decision	9
STANDARD OF REVIEW	11
DID THE BOARD ERR IN CONCLUDING THAT THE MECHANIC WAS A "WORKER"	11
The Petitioner's Arguments	11
The Respondent's Arguments	14
The Legal Principles	18
Discussion	21
DID THE BOARD ERR IN CONCLUDING THAT A DEFENCE OF DUE DILIGENCE WAS UNAVAILABLE	22
The Petitioner's Arguments	23
The Respondent's Arguments	24
Discussion	27
WAS THE DELEGATE'S PENALTY PROCEDURALLY UNFAIR	28
The Petitioner's Arguments	29
The Respondent's Arguments	30
Discussion	30
CONCLUSION	35

Introduction

[1] The petitioner, EVR Operations Limited, pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 challenges a decision rendered by the Environmental Appeal Board (the “Board”) upholding the decision of a delegate of the Chief Inspector of Mines (the “Delegate”) to impose an administrative monetary penalty on the petitioner for a violation of the *Health Safety and Reclamation Code for Mines in British Columbia* (the “Code”).

[2] The petitioner was found to have violated the Code by failing to ensure that a mechanic employed by a contractor was adequately trained. The mechanic suffered significant injuries while installing a wheel on a truck in a workshop at a mine site operated by the petitioner.

[3] The petitioner argues that the Board erred by:

- a) Concluding that the mechanic was a “worker” within the meaning of the *Mines Act*, R.S.B.C. 1996, c. 293 (the “Act”); and
- b) Concluding that the defence of due diligence was not available to the petitioner.

[4] The petitioner also argues that the Board erred in finding that the process for hearing the allegations before the Delegate was not procedurally unfair. The petitioner submits that basic principles of procedural fairness were violated because it was required to make submissions about a potential penalty prior to a decision having been made about whether the petitioner was culpable or the basis for a finding of culpability. The petitioner further argues that the Board’s process was similarly unfair as it repeated the error made by the Delegate when it required the petitioner to make submissions on both culpability and penalty at the same time.

[5] The respondent, the Chief Inspector of Mines (the “respondent”) submits that the Board did not make any of the alleged errors, was correct when it found that the

procedure before the Delegate was fair, and that the procedure before the Board was fair.

[6] The Environmental Appeal Board, takes no position on the merits of the Board's decision but advanced submissions relating to the applicable standards of review.

The Legislative Scheme

[7] Mining activities in British Columbia are heavily regulated by a legislative scheme created by the *Act*, its associated regulations, and the *Code*.

[8] Health and safety objectives are one part of the overall scheme and central to the resolution of this judicial review application. In particular, the *Code*'s objectives include protecting "employees and all other persons from undue risks to their health and safety arising out of or in connection with activities at mines" and to safeguard "the public from risks arising out of or in connection with activities at mines".

[9] Section 21 of the *Act* requires a mine owner/agent to appoint a mine manager before work at a mine begins. The mine manager must possess the prescribed qualifications, and the manager or their designate must attend an operating mine daily.

[10] Under s. 24 of the *Act*, managers, along with owners, agents, and permittees, must take all reasonable measures to ensure compliance with the *Act*, regulations, and *Code* as well as the permit issued for the mine and any order made under the *Act* in relation to the mine.

[11] Parts 1.11.1 and 1.11.2 of the *Code* impose specific health and safety obligations on managers related to training:

1.11.1 The manager shall ensure that

- (1) workers are adequately trained to do their job or are working under the guidance of someone who has competency both in the job and in giving instruction, and
- (2) ensure that all employees receive thorough orientation and basic instruction in safe work practices.

1.11.2 The manager shall maintain a record of all the training workers and supervisors have received, and make this record available to an inspector upon request.

[12] The objectives and corresponding obligations established by the legislation are accompanied by a comprehensive enforcement scheme administered primarily by the Chief Inspector or those to whom the Chief Inspector has delegated their powers under s. 2.4 of the *Act*. The *Act* provides the Chief Inspector with broad authority.

[13] Section 36.1 of the *Act* provides that the Chief Inspector (or their delegate) may, after giving a person an opportunity to be heard, find on a balance of probabilities that the person has contravened or failed to comply with provisions of the *Act*, the regulations, the *Code*, or an order made under the *Act*.

[14] If a contravention is found under s. 36.1, the Chief Inspector may, after considering the prescribed matters, impose an administrative monetary penalty on the person in an amount that does not exceed the prescribed limit: *Act*, s. 36.2.

[15] Section 2 of the *Administrative Penalties (Mines) Regulation*, B.C. Reg. 47/2017 (the "*Regulation*") sets out the matters the Chief Inspector must consider before imposing an administrative monetary penalty.

[16] Section 7(1) of the *Regulation* prescribes an upper limit of \$500,000 for administrative monetary penalties relating to contraventions of part 1.11.1 of the *Code*.

Appeals

[17] Appeals to the Board are authorized by s. 36.7 of the *Act* which provides that a person who has been given notice of an administrative monetary penalty under s. 36.3 may appeal the decision imposing the penalty to the "appeal tribunal" within 30 days after notice is given. Section 9 of the *Regulation* specifies that the Board is the tribunal responsible for hearing appeals brought under s. 36.7 of the *Act*.

[18] Under s. 36.7(4)(a) of the *Act*, the Board may confirm, vary, or rescind the decision imposing the penalty.

[19] In this case, the Board found that it had the authority to conduct the appeal as a ‘hybrid appeal’, enabling the parties to both rely on the evidence that was before the Delegate and introduce new evidence.

Contraventions

[20] The administrative monetary penalty regime established by ss. 36.1 through 36.7 is separate from enforcement through the *Act*’s regulatory offence provisions. This is made clear by ss. 36.3(2) through (4), which contemplates both an administrative monetary penalty and prosecution for a regulatory offence.

[21] Under s. 37(2) of the *Act*, a person commits an offence if they contravene a provision of the *Act*, regulations, or *Code*, or a condition of a permit or order made under the *Act*. A person who commits an offence within the meaning of s. 37(2) is liable to a fine of not more than \$1 million, imprisonment for not more than three years, or both.

[22] Thus, the imposition of an administrative monetary penalty is the outcome of a finding of contravention under s. 36.1, not the prosecution of an offence under ss. 37 or 25.

The Relevant Definitions

[23] Section 1 of the *Act* sets out the following relevant definitions:

“worker” means a person who is an employee but does not include a supervisor

“supervisor” means a person who instructs, directs or controls workers in the performance of their duties and who is authorized by the manager to take or recommend disciplinary action against workers

“manager” means the person appointed under section 21 to be responsible for the management and operation of a mine

[24] “Employee” and “employer” are not defined in the *Act* but are defined in the *Code*, as follows:

“employee” means all persons employed at a mine

“employer” means owner, agent, or manager as defined in the *Mines Act*

Background Facts

[25] The petitioner owns and operates the Greenhills Operations mine site, a steelmaking coal operation near Elkford, British Columbia. The mine operates under a permit issued by the Ministry of Energy, Mines and Low Carbon Innovation (the “Ministry”). At the time of the impugned decision and the events which underpin it, the petitioner operated under the name Teck Coal Ltd.

[26] The petitioner hired MAXAM Explosives Inc. (“MAXAM”) as a contractor to provide highly specialized and regulated explosive services to it. MAXAM transports, mixes, and delivers explosives at the Greenhills Operations mine site.

[27] MAXAM’s work included the use of 20-ton prill trucks. The wheels of these trucks consist of inflatable tubes mounted on 24-inch, multi-piece split rims. An independent, offsite tire company performed all maintenance work and repairs on the rims and tires and returned the assembled wheels to MAXAM for installation. MAXAM employed mechanics to remove and re-install the wheels as necessary. These mechanics performed much of their work in a workshop located in a secure facility within the Greenhills Operation.

[28] On January 28, 2019, one of the prill trucks came into the workshop with a flat tire. A mechanic employed by MAXAM (the “Mechanic”) was replacing the wheel with a fully inflated replacement wheel, when the replacement wheel exploded, leaving the Mechanic with life-altering injuries (the “Workplace Incident”). The Mechanic was a journeyman red-seal certified mechanic.

[29] The Workplace Incident led to a number of investigations including by the petitioner, MAXAM, and the Ministry. The Ministry’s investigation under the *Act* ultimately led to a Ministry Report to Statutory Decision Maker in Recommendation of Administrative Hearing (the “Report to SDM”).

[30] The Report to SDM recommended that an administrative monetary penalty be imposed on the petitioner for breaching parts 1.11.1(1) and (2) of the *Code*, in particular by failing to assess the risks and ensuring workers were adequately trained and employees received thorough orientation and basic instruction in safe work practices involving replacing a split-rim wheel assembly generally, and particularly when tires are fully inflated.

The Delegate's Decision

[31] On June 8, 2021, the Delegate provided the petitioner with notice of an opportunity to be heard (the "OTBH Notice") and the petitioner delivered submissions to the Delegate on November 16, 2021. Following which, the Delegate issued his decision on January 28, 2022. The Delegate concluded that the evidence before him supported a finding, on a balance of probabilities, that the petitioner had contravened part 1.11.1(1) of the *Code*, but not subsection (2).

[32] The Delegate's findings included:

- a) The petitioner's proposed interpretation of the term "worker" in part 1.11.1(1) of the *Code*, as capturing only those in a direct employment relationship with the petitioner, would be inconsistent with the purpose of the *Code* and other instances in the *Code* where the term is used. Additionally, it would result in absurdity if "worker" only applied to the petitioner's direct employees;
- b) The petitioner has an obligation to ensure that all workers on its site are adequately trained in accordance with part 1.11.1(1), regardless of whether the petitioner is the direct employer of the worker or whether a contractor engaged by the petitioner is the direct employer of the worker;
- c) The petitioner did have some control over MAXAM's staff as demonstrated by the Environment, Health, Safety & Community Work Plan; and

- d) Any due diligence exercised by the petitioner in an effort to protect the health and safety of workers would be considered in assessing the quantum of the administrative monetary penalty imposed.

[33] In assessing the penalty amount, the Delegate began with a base amount of \$200,000 based on findings that the gravity or magnitude of the non-compliance was “major” and that the real or potential adverse effects were “very high”. Taking into account the prescribed factors in s. 2 of the *Regulation*, the Delegate then applied reductions from this amount based on evidence of efforts the petitioner had made to correct the contravention or failure, and evidence of efforts made by MAXAM to prevent reoccurrence of the contravention, as noted in the Report to SDM.

[34] The Delegate imposed an administrative monetary penalty of \$140,000 on the petitioner as a result of its non-compliance with part 1.11.1(1) of the *Code* (the “Penalty”).

The Board’s Decision

[35] The petitioner appealed the Delegate’s decision to the Board pursuant to s. 36.7 of the *Act*. The appeal proceeded by way of a hearing *de novo*, concluding on January 24, 2023.

[36] The appeal raised the following issues:

- a) the proper statutory interpretation of the term “worker” in part 1.11.1(1) of the *Code*;
- b) whether the Delegate’s determination was fair given that the Delegate found MAXAM did not contravene part 1.11.1 of the *Code*;
- c) whether due diligence was available to the petitioner as a defence against a finding of a contravention or whether it was only a factor in the assessment of the Penalty;

- d) whether the Delegate was procedurally fair in determining the Penalty;
and
- e) whether the quantum of the Penalty was consistent with the statutory requirements that bore upon the Delegate and his discretion.

[37] The Board issued its decision on December 30, 2024, confirming the outcome of the Delegate's determination.

[38] The Board found that the meaning of the term "worker" in part 1.11.1(1) was not limited to those in a direct employment relationship with the petitioner, but included all workers employed at the mine, including the Mechanic at the time of the Workplace Incident. The Board reasoned that this interpretation was consistent with the stated objectives of the *Code*, which include to "protect employees and all other persons from undue risks to their health and safety arising out of or in connection with activities at mines" and to "safeguard the public from risks arising out of or in connection with activities at mines". The Board took into account the definitions of related terms, particularly the *Code's* definition of "employee", which includes "all persons employed at a mine."

[39] The Board concluded that due diligence was not available to the petitioner as a defence against a finding that it had contravened part 1.11.1(1) of the *Code* as the legislation does not specifically provide for a due diligence defence. Applying the framework set out in *R. v. Sault Ste. Marie*, [1978] 2 SCR 1299, 85 DLR (3d) 161, the Board found that the enforcement scheme at issue operated on an absolute liability basis. The Board held that the petitioner had not been duly diligent in any event.

[40] The Board found there was no procedural unfairness in how the Delegate arrived at the Penalty. The Board found the OTBH Notice and associated materials provided the petitioner with enough information to understand the case it had to meet, the type of evidence that it should present, and the types of submissions that would support its position at the hearing. Moreover, the Board found that the

presumption that it conducts its appeals as new hearings, which it did in this case, cured any unfairness in the Delegate's process in any event.

[41] In the result, the Board did not disturb the Delegate's finding that the petitioner had contravened part 1.11.1(1) of the *Code* or the Penalty imposed.

Standard of Review

[42] The parties agree that s. 59 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "ATA") applies to this Court's review of the Board's decision. Section 59(1) of the ATA provides that the standard of review is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

[43] It is also agreed that the Board's interpretation of the term "worker" and its analysis of whether a defence of due diligence was available to the petitioner are questions of law reviewable on the correctness standard.

[44] The Board's conclusion that the hearing *de novo* before the Board cured any procedural unfairness in the OTBH process is a question of mixed fact and law reviewable on the correctness standard. The standard of review applicable to the Board's process is fairness.

Did the Board Err in Concluding that the Mechanic was a "worker"

The Petitioner's Arguments

[45] The petitioner argues that the Board erred by emphasizing the purpose and the language of the *Code* instead of focussing on the word "worker". The Board should not have relied on the *Code* to provide guidance for how "worker" should be interpreted as doing so "is in direct contradiction of s. 13 of the *Interpretation Act*", which provides that "an expression used in a regulation has the same meaning as in the enactment authorizing the regulation". The intention of the legislature is to be found in the words of the statute itself and not in the words of the regulations: *Geisha Garden Ltd. (Re)*, (1960), 1960 CanLII 468 (BC SC), 30 W.W.R. 617, 127 C.C.C. 30 (B.C.S.C.).

[46] The petitioner says that this approach caused the Board to engage in results-oriented reasoning. Discerning legislative purpose entirely from statutory language and then using that purpose to give meaning to statutory language can become a circular exercise: *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2014 ONCA 89 at para. 36.

[47] It is not open to an administrative decision maker to adopt an interpretation it knows to be inferior – albeit plausible – merely because the interpretation appears to be available and expedient. The decision maker’s responsibility is to discern meaning and legislative intent and not to reverse engineer a desired outcome: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 121.

[48] The petitioner argues that by finding that the Mechanic – an employee of a contractor – met the definition of “worker” the Board reinterpreted a word that the legislature had defined. The Board impermissibly assumed a legislative authority rather than adjudicative role, by using the statutory purpose to give meaning to the statutory language.

[49] The petitioner submits that the Board ignored the text and context provided by the definition, “worker” refers to a subset of persons who are part of the broader class of persons who are an “employee”. “Worker” and “employee” are both used to refer to persons who are directly employed and in an employment relationship with the mine owner. It is clear from the definition of “worker”, which expressly excludes “supervisor”, read in the context of the *Act* and *Code*, that “worker” is not intended to capture everyone who works at the mine. Rather, it is tailored to include individuals whose work is directly controlled and supervised by persons within the hierarchy established by the direct employer.

[50] The petitioner submits that neither the ordinary meaning nor the legal meaning of the word “employee” – expressly referred to in the definition of “worker” – supports an interpretation that includes a contractor’s employee to be an employee of the mine’s owner.

[51] The result of the Board's interpretation means that the petitioner would be obliged to provide training in the practice of law to a lawyer who was providing legal advice at its mine site, and training in aviation to a helicopter pilot who delivers materials to a mine site.

[52] The purpose of referring to "worker" in the *Act* is to distinguish between employees who are supervised by other employees, and employees who act as supervisors in the workplace.

[53] The petitioner acknowledges that it has obligations to workers employed by contractors or subcontractors, as set out in ss. 24-26 of the *Act* which imposes obligations on an owner in relation to contractors and part 1.1.2 of the *Code*, which provides that notwithstanding the absence of a specific provision, "all work shall be carried out without undue risk to the health or safety of any person".

[54] However, these provisions are narrower in that they require "reasonable measures" and control rather than direct obligations. The Board failed to appreciate the distinction when it concluded:

[95] The Appellant argues that it does not fully control the work of the Contractor's employees as intended by the wording of section 25; therefore part 1.11.1(1) of the Code should not apply to it. I note, however, that section 25(1) says that if work in a mine is let to a contractor, the contractor and the contractor's manager, as well as the owner, agent and manager of the mine, must take all reasonable measures to ensure compliance with the provisions of the Act, Regulations, and Code. I understand these words to say that even though the Appellant has hired a contractor for specialist services, the owner, agent and manager of the mine are still required to comply with the Code. To be clear, the obligation for the training established under part 1.11.1 of the Code cannot be delegated. The obligation to ensure that the Contractor's workers, employed at a mine, were adequately trained remained with the Appellant.

[55] The petitioner submits that the Board missed the point, because it was not about "delegation", but rather the duty in part 1.11.1(1) is never engaged in relation to an employee of another entity as opposed to a "worker" as defined by the legislature.

[56] The language employed throughout the *Code* and the *Mines Act* is clear and concise. Definitions introduced by “means” are exhaustive and the *Act* provides a definition of “worker” which the legislature selected intentionally. The Board did not have jurisdiction to read into the definition a broader meaning that was not provided for by the legislature.

The Respondent’s Arguments

[57] The respondent argues that the Board did not err in concluding that an employee of a contractor at a mine is a “worker”. The Board’s conclusion correctly applied the modern principle of statutory interpretation in its analysis. The Board’s interpretation of “worker” is harmonious with the legislative scheme and its objectives.

[58] They submit that the Board did not engage in a circular exercise of discerning the statutory purposes and then use that purpose to give meaning to the words it was tasked with interpreting. The purpose of the *Code* is clearly stated and includes to: “protect employees and all other persons from undue risks to their health and safety arising out of or in connection with activities at mines” and to “safeguard the public from risks arising out of or in connection with activities at mines”.

[59] The respondent notes that the Board correctly identified these objectives and articulated how it would consider those objectives to avoid the error that the petitioner now argues the Board made:

[78] The first two objectives are relevant to this appeal, and I now turn to the language of the *Code* provisions under scrutiny and, where necessary, the language of the *Act* for the specific textual and contextual analysis, as part of the assessment of whether part 1.11.1(1) applies to the Appellant. The Appellant has expressed concern that describing or listing the purposes of the *Act*, and in this case the *Code*, early in analysis can lead to one being able to attribute a meaning to any of the words used by the *Code* to meet the purposes or objectives of the legislation, despite the intended meaning of those words, which could be different. It is a concern to be aware of. It is a “trap” that can be avoided by applying the modern principle of statutory interpretation to words, requiring regard to the text where the words appear, the context within which they are used, and the purposes of the legislative scheme (*Vavilov*).

[79] In undertaking my analysis, I am aware of this trap and take steps to avoid it. While I have set out the objectives of the *Code* first in this analysis, it is not for the purpose of discerning the meaning of the *Code* and *Act* provisions and then fitting the meaning of these provisions to the objectives. Rather, these objectives are set out first to ground an understanding of the *Code* as a whole. It is the textual analysis that comes first in interpreting legislation, and the legislative objectives are then layered over this analysis to provide a clearer understanding.

[60] The respondent argues that the Board was correct to take into account the context and purpose of the legislative scheme and the Board's reasoning demonstrates that it treated the *Code*'s objectives as an aspect of the interpretative exercise, it did not read the words at issue to fit these objectives, as alleged by the petitioner.

[61] In order to answer the question of who is a "worker", it was incumbent on the Board to consider the related statutory definitions in the *Act* and the *Code*. The respondent submits that when the definitions are read in combination with the meanings of other defined terms that appear within the definition of worker, "worker" means a person who is [*employed at a mine*] but does not include a [*person who instructs, directs or controls workers in the performance of their duties and who is authorized by the manager to take or recommend disciplinary action against workers*]. The Mechanic fits this definition of "worker".

[62] The respondent submits that the board correctly found that the petitioner's interpretation of "worker" ignores the *Code*'s definition of employee which is defined broadly to mean "all persons employed at a mine". A consistent reading of "worker" and "employee" is by itself dispositive of this interpretation issue.

[63] The Board also correctly concluded that reading the term "worker" consistently with the definition of "employee" ("any person employed at a mine") also "supports the health and safety objectives of the *Code* as demonstrated by the *Code*'s purpose clause of addressing all, not some, aspects of health and safety in the operation of a mine and protecting all employees at a mine, including workers, from undue risks to their health and safety".

[64] The petitioner's argument that "workers" excludes those employees not hired directly by the mine owner is inconsistent with the *Code's* broad health and safety objectives and the correspondingly broad definition of "employee" in the *Code*. The result of which would be the creation of two classes of workers under the *Code*, only one of which would benefit from the health and safety objective contained in part 1.11.1(1) of the *Code*.

[65] In response to the petitioner's argument that the Board's interpretation of "worker" would mean that the manager was responsible for providing training to lawyers and helicopter pilots is inapt. Part 1.11.1(1) does not require the manager to provide training; it requires the manager to ensure that workers are trained.

[66] Contrary to the petitioner's argument that ss. 24-26 of the *Act* do not support the Board's interpretation of "worker", the respondent submits that the Board's interpretation is consistent with these sections. Section 24 imposes a duty on the owner, agent, manager, or permittee to take all reasonable steps to ensure compliance with the *Act* and the *Code*, the mine's permit, and any order made under the *Act* in relation to the mine. Section 24(2) imposes the same obligations on a person who performs or supervises work in, on, or about a mine, with respect to those requirements applicable to that person's work or supervision.

[67] The respondent submits that s. 25 of the *Act* supports the Board's conclusion that "worker" includes a contractor's employee:

25(1) If work in or about a mine is let to a contractor, the contractor and the contractor's manager, as well as the owner, agent and manager of the mine, must take all reasonable measures to ensure compliance with the provisions of this Act, the regulations, the code, the permit and orders under this Act pertaining to the work over which they have control.

[68] As a result, the respondent argues that the Board was correct when it found:

[94] Part 1.11.1 of the *Code* pertains to the obligations of the mine in relation to training and education, which is more limited in scope than the obligations found in section 25. I find, however, there is no inconsistency between the requirements of the *Code* regarding training and the requirements of section 25 of the *Act* as they pertain to meeting the health and safety objectives of the legislative scheme. While section 25 of the *Act* imposes a general

requirement on contractors regarding compliance with the *Act*, regulation and *Code*, as part 1.11.1 of the *Code* imposes a specific obligation on the manager, I must interpret the training obligations under that part as falling only on the manager.

[69] The Board correctly rejected the petitioner's argument that since it does not control the work of the contractor's employees as intended by the wording of s. 25; therefore, part 1.11.1(1) of the *Code* should not apply to it:

[95] ... Section 25(1) says that if work in a mine is let to a contractor, the contractor and the contractor's manager, as well as the owner, agent and manager of the mine, must take all reasonable measures to ensure compliance with the provisions of the *Act*, Regulations and *Code*...

[70] The respondent argues that the Board was correct when it concluded that even though the petitioner had hired a contractor, the owner and manager of the mine were still required to comply with the *Code*. The obligation for the training established under part 1.11.1 of the *Code* cannot be delegated to a contractor. The obligation to ensure that the contractor's workers, employed at a mine, were adequately trained remained with the petitioner.

[71] Interpreting "worker" to include a contractor's employee for the purpose of part 1.11.1 of the *Code* is consistent with the obligations created by s. 25 of the *Act*. The s. 25 requirement for a contractor to comply with the entire statutory scheme does not absolve the petitioner from its obligations.

[72] In the respondent's submission, s. 26 of the *Act* also supports the Board's interpretation of "worker". The section provides:

26 Each manager must ensure that every person employed at a mine, if required by the regulations or the code, is under the daily supervision of a person who holds a valid and appropriate certificate as required by the regulations or the code.

[73] The Board's interpretation of "worker" is entirely consistent with the s. 26 requirements, which places responsibility on the manager for every person employed at a mine. The responsibility is not limited to those who the petitioner directly controls. The respondent refers to part 4.9.14(3) of the *Code* which provides

that no person shall work on tires and rims unless qualified. By virtue of s. 26, the mine manager is responsible to ensure that “every person employed at a mine” who “works on tires and rims” is under the daily supervision of a qualified person. This example provides further support for the board’s interpretation of “worker” in part 1.11.1(1) of the *Code* as including all persons employed at a mine.

[74] Adopting the petitioner’s interpretation would create a void of responsibility for work health and safety under the *Code*. If a worker at a mine who is not directly employed by the mine is harmed, as a result of inadequate training or supervision within the meaning of part 1.11.1, no one would be liable to pay an administrative monetary penalty in relation to that contravention. Breaches of a provision in the context of a contractor relationship could only be prosecuted as an offence. Such an interpretation is incompatible with the *Code*’s purpose of ensuring the health and safety of all those who work at a mine.

[75] Statutory interpretation requires consideration of not only the text of the law and how its internal provisions fit together, but also the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates as well as the overarching policy goals of the relevant legislation: *West Fraser Mills Ltd. v. British Columbia (Worker’ Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 41.

The Legal Principles

[76] The modern approach to statutory interpretation is well settled: the exercise requires that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para. 23; *Seabridge Gold Inc. v British Columbia*, 2025 BCSC 558 at para. 42; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26. This requires consideration of the text of the statute, as well as its context, purpose, and relevant legal norms: *R. v. Wolfe*, 2024 SCC 34 at para. 32.

[77] The Supreme Court recently reviewed and re-affirmed the modern approach in *R. v. Nguyen*, 2026 SCC 10:

[79] In accordance with the modern approach to statutory interpretation, these interpretative controversies must be resolved by reference to the text, context and purpose of the provisions (*Rizzo*, at para. 21; *Basque*, at para. 63; *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, at para. 30; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at paras. 165-70). It is worth emphasizing the key elements of the modern approach that are particularly relevant to our task in this appeal.

[80] First, while the text is an important indicator of legislative intent, it is not in itself determinative of the meaning of a statutory provision (see *Piekut v. Canada (National Revenue)*, 2025 SCC 13, at para. 45, citing *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *R. v. Wilson*, 2025 SCC 32, at para. 34). Even words that appear clear on their face may reveal a different meaning when viewed in their full context and in light of their purpose (see *La Presse*, at para. 23, citing *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10). This is a necessary and well-accepted feature of the modern approach (*2952-1366 Québec*, at para. 10), which represented a departure from an analysis centred on whether text is plain or ambiguous towards a broader search for legislative meaning (see *R. Sullivan*, *The Construction of Statutes* (7th ed. 2022), at § 2.04; Côté and Devinat, at paras. 155-60). It is a methodological mistake — a mistake that can lead the reader to fall into a reviewable error of law — to end the interpretative exercise by concluding the perceived meaning of the *text* to be plain. It is the meaning of the provision of the *statute* and its clarity that is at issue, informed by its text, context and purpose. The meaning assigned to plain text may coincide with the true statutory meaning, but it is perilous to assume that it does without undertaking the proper analysis in keeping with the modern approach. Text read in isolation cannot be simply characterized as plain or ambiguous but is, in all cases, one among a broader range of factors relevant to the exercise of statutory interpretation (Sullivan, at s. 2.04[5]; Côté and Devinat, at para. 160).

[81] Second, the overall purpose or goal of a legislative scheme informs the analysis, although one must be mindful that the legislature's intent is rarely that one purpose be pursued at all costs. Other interests and subsidiary purposes, revealed through a careful analysis of the legislative scheme and the means the legislature has chosen to achieve its goal, are also important in ascertaining the intended meaning (*R. v. Rafilovich*, 2019 SCC 51, [2019] 3 S.C.R. 838, at para. 30, citing *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 174). The aim is to achieve a fitting harmony between these various purposes in a manner that best accords with the legislature's intent (see Sullivan, at § 9.02[5]; A. Barak, *Purposive Interpretation in Law* (2005), at p. 116; *Telus*, at para. 32).

[78] Subordinate legislation can be used to assist in ascertaining a legislature's intention, provided that the subordinate legislation does not conflict or deviate from

the intended scope of the legislation. This approach was confirmed by the Supreme Court in *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54:

35 As a last point, it is worth commenting on the approach of the majority judgment of the Tribunal in disregarding the regulations in construing the meaning of s. 70(6). While it is true that a statute sits higher in the hierarchy of statutory instruments, it is well recognized that regulations can assist in ascertaining the legislature's intention with regard to a particular matter, especially where the statute and regulations are "closely meshed" (see *R. v. Campbell*, 1999 CanLII 676 (SCC), [1999] 1 S.C.R. 565, at para. 26; *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 282). In this case, the statute and the regulations form an integrated scheme on the subject of surplus treatment and the thrust of s. 70(6) can be gleaned in light of this broader context.

[79] While it would be inappropriate to rely solely on regulations (or the *Code*) to interpret a provision of the governing legislation, where the language of the regulations are consistent with the interpretation gleaned from an act itself, it is appropriate to consider the regulations when interpreting the governing statute: *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2 at para. 31.

[80] Where there is an integrated scheme found in legislation and regulations, there is no prohibition against referring to a regulation in order to undertake the required statutory interpretation: *Carvalho v. British Columbia (Medical Services Commission)*, 2018 BCCA 95 at para. 28.

[81] For example, in *Ontario (Travel Industry Council of Ontario) v. Gray*, 2010 ONCA 518, the defendant Mr. Gray was charged with acting as a travel agent without being registered contrary to s. 4(1) of the *Travel Industry Act, 2002*, S.O. 2002, c. 30, Sch. D, s. 1(1). Mr. Gray argued that because he did not collect a fee for his services, he was not a "travel agent" within the meaning of the Act. "Travel agent" was defined the Act as: "a person who sells, to consumers, travel services provided by another person."

[82] The Court held that limiting the definition to only persons who "sell" travel services as a principal was too narrow of an approach and included a person who sells travel services to consumers as agent for the provider of those services. In

reaching this conclusion, the Court considered definitions from a regulation made pursuant to the *Travel Industry Act* and concluded that the task of statutory interpretation can be assisted by examining the regulation which “complements the legislative regime”. The Act and the regulation formed “an integrated scheme for the regulation of the travel industry in the interests of the travelling public.” In such circumstances, the regulation can assist in ascertaining the legislature’s intention and “[ensuring] conformity between the legislation and the regulation that together form this integrated regulatory scheme”.

Discussion

[83] In my view, the Board correctly concluded that the Mechanic, employed by the contractor MAXAM, was a “worker” within the meaning of the *Act*. The portions of the *Act*, regulations, and *Code* at issue are an integrated scheme intended to ensure the safety of all persons who work at a mine.

[84] I do not accept that the Board engaged in circular reasoning by considering the purpose of the *Code* in the context of the overall legislative scheme as part of the interpretative process. The conclusion reached by the Board is in harmony with the entire legislative scheme.

[85] I accept the petitioner’s position that inferior legislation cannot override the intent of the legislature expressed in a statute, but that is not the effect of the Board’s conclusion. While the legislature did not define “employee” in the *Act*, it is instead defined in the *Code*. The petitioner is critical of the Board’s focus on “employee” in their analysis, but it was incumbent on the Board to consider the definition of “employee” to determine whether the Mechanic was a “worker”. The petitioner’s argument that an employee could not mean an employee of a contractor and thus could not be a “worker” in my view fails to consider the *Act* in context, including the entire legislative scheme and its purpose. In context, “worker” is not a subset of “employees”. The petitioner’s argument ignores the *Code*’s definition of employee.

[86] I agree with the respondent, in determining who was a “worker”, it was incumbent on the Board to consider the definitions in the *Act* and the *Code*. When read together, “worker” means a person who is employed at a mine but does not include a person who directs or controls workers in the performance of their duties and who is authorized by the manager to take or recommend disciplinary action against workers. A consistent reading of “worker” and “employee” is dispositive of the question.

[87] I find further support for my conclusion in ss. 24-26 of the *Act* which imposes the same general obligations on both the owner of a mine and a contractor to be responsible for compliance of the *Act*, regulations and *Code*. The Board’s interpretation of “worker” is consistent with these provisions. Just because part 1.11.1(1) imposes specific training obligations on only the owner of the mine does not mean that “worker” does not include a contractor’s employee.

[88] The Board was correct when it concluded that the employee of the contractor MAXAM was a “worker” within the meaning of the *Act*. In my view, the petitioner’s arguments place undue focus on the text of the *Act* without considering that the text must be informed by its context and purpose. The overall purpose of a legislative scheme informs the analysis and the means the legislature has chosen to achieve its goal is important in ascertaining the intended meaning.

Did the Board Err in Concluding that a Defence of Due Diligence was Unavailable

[89] Administrative penalties may give rise to either strict liability, in which case a defence of due diligence is available, or to absolute liability, in which case it is not. In order to determine whether the defence of due diligence is available, the Board was required to follow the analytical framework set out in *Sault Ste. Marie*. The starting point in this analytical framework is a rebuttable presumption that liability is strict, and a due diligence defence is available. The presumption in favour of strict liability can be rebutted if the legislature made it clear that guilt would following proof of the

described contravention: *Younger Extraction Plant Inc. v. Taylor Management Company Inc. et al*, 2006 BCSC 444 at para. 12.

[90] The analytical framework in *Sault Ste. Marie* required the Board to consider the overall regulatory pattern adopted by the legislator, the subject matter of the legislation, the importance of the penalty, and the precision of the language used by the legislator.

The Petitioner's Arguments

[91] The petitioner argues that the Board erred in concluding that the contravention in issue was one of absolute liability. The Board's assessment of the approach set out in *Sault Ste. Marie* incorrectly led to its conclusion, and the application of the framework makes it clear that the contravention and penalty scheme was one of strict liability.

[92] The petitioner argues that the Board's conclusion is inconsistent with the strong presumption against absolute liability. The Board did not apply this strong presumption and found that because there was no express statement about a due diligence defence in the legislation, this was a basis to find that the presumption had been rebutted. This, the petitioner says turned the "analytical framework on its head."

[93] Where the legislature intends to remove due diligence as a defence to an administrative penalty, it does so expressly. By contrast, other provincial regulatory regimes that give rise to administrative penalties expressly state that due diligence is not available.

[94] In relation to the *Sault Ste. Marie* factors, the petitioner submits that the importance of the penalties is significant. A penalty up to \$500,000 may be imposed under the regime. The Board erred when it concluded that the quantum of the penalty could not eliminate or curtail the business of a licensee being penalized and is thereby of a lesser impact. A sanction of \$500,000 could very well put an individual or small business into insolvency.

[95] Second, the subject matter of the legislation is broad and is concerned with all stages of a mine's life and operations. The primary purpose of the legislation is not to ensure a stable and predictable source of income for government or to impose penalties but to regulate mining operations.

[96] Third, the language of the provision does not expressly rebut or precisely remove an accused's ability to present a legal excuse for contravening the legislation. Where a section creates an offence of failing to meet a standard or duty of care in respect of another person it is counter intuitive to suggest that a defendant cannot raise a defence of due diligence or reasonable care: *R. v. Kanda*, 2008 ONCA 22 at para. 41.

[97] Fourth, precise language was not used in connection with the administrative penalties in issue.

The Respondent's Arguments

[98] The respondent accepts that there is a rebuttable presumption that administrative monetary provisions are strict liability but submits that express statutory language is not required to rebut the presumption. The Board correctly concluded:

[156] . . . However, the absence of the specific wording creating absolute liability does not mean that the contrary interpretation is true. Simply because the *Act* does not specifically state an absolute liability regime is created by the administrative enforcement regime, it does not necessarily follow that a strict liability regime is created. An analysis under the framework set out in *Sault Ste. Marie* must be undertaken.

[99] The Board correctly identified and applied the *Sault Ste. Marie* framework. First, with respect to the legislative purpose and intent, the enactment of ss. 36.1 to 36.7 of the *Act* demonstrates the legislature's intention to provide an additional mechanism from that of the regulatory offence provisions, for the enforcement of health and safety rules in furtherance of the overarching objective of protecting employees and all other persons from undue health and safety risks associated with activities at mines.

[100] Second, in assessing the overall pattern of the administrative enforcement scheme, and the precision of the language used, the Board correctly noted that the statutory decision maker is required to consider intention and steps taken to avoid a contravention when assessing the quantum of the administrative monetary penalty and not in deciding whether there was a contravention in the first place.

[101] The respondent says this explicit distinction supports the conclusion that due diligence is not available as a defence to the contravention alleged and rebuts the presumption of strict liability. Otherwise, there would have been no need for the legislature to identify that due diligence considerations were relevant only to the assessment of the penalty. If the legislature implied that they intended to make the defence of due diligence available in respect of part 1.11.1(1) of the *Code*, it would be inconsistent with the highly prescriptive overall pattern of the monetary penalty scheme and the precise language used to dictate the available penalties and the factors that must be considered in determining the appropriate penalty.

[102] The regulation to be read in context of s. 36.2(1) of the *Act*, supports the Board's conclusion that since due diligence is required to be considered before imposing an administrative penalty, if it were available as a defence for the contravention, the legislation would have said as much. The regulation provides:

Assessment of administrative penalty

2 Before the chief inspector imposes an administrative penalty on a person, the chief inspector must consider the following matters, if applicable:

- (a) the gravity and magnitude of the contravention or failure;
- (b) the real or potential adverse effect of the contravention or failure;
- (c) previous contraventions or failures by, administrative penalties imposed on, or orders issued to the following:
 - (i) the person who is the subject of the determination;
 - (ii) if the person is an individual, a corporation for which the individual is or was a director, officer or agent;
 - (iii) if the person is a corporation, an individual who is or was a director, officer or agent of the corporation;
- (d) whether the contravention or failure was repeated or continuous;
- (e) whether the contravention or failure was deliberate;

- (f) any economic benefit derived by the person from the contravention or failure;
- (g) the person's efforts to prevent the contravention or failure;
- (h) the person's efforts to correct the contravention or failure;
- (i) the person's efforts to prevent reoccurrence of the contravention or failure;
- (j) any other factors that, in the opinion of the chief inspector, are relevant.

[emphasis added]

[103] The Board's conclusion is supported by examples of other administrative monetary penalty schemes in British Columbia that make express allowance for due diligence defences. If the legislature intended that a due diligence defence be available to these provisions, it would have said so.

[104] Third, in relation to importance of the penalty and in response to the petitioner's argument that the Board erred by not finding that the potential monetary penalty was significant, the respondent acknowledges that the same monetary penalty may have different impacts on different companies depending on their own financial position. However, the Board's conclusion was that the intent and the ordinary impact of a monetary penalty is, as a matter of logic, less onerous than other penalties such as cancellation of a permit, for example.

[105] Notably, under this administrative enforcement regime, while the imposition of an administrative monetary penalty is discretionary, the decision-maker does not have any discretion to elect the type of consequences that can follow a contravention.

[106] The respondent submits that the Board correctly adopted and applied the *Sault Ste. Marie* framework and in doing so, correctly concluded that the presumption of strict liability was rebutted in this case.

Discussion

[107] In my view, the Board was correct when it found that the administrative contraventions in issue are absolute liability contraventions. An application of the *Sault Ste. Marie* analytical framework demonstrates that the presumption of strict liability has been rebutted.

[108] I accept that in some circumstances the legislature has explicitly removed the ability to raise a defence of due diligence, but that is not always the case nor is it required. In this case, it is significant that ss. 36.1 to 36.7 of the *Act* create an additional mechanism, separate and apart from the regulatory offence provisions, which are intended to enforce health and safety rules. Proceeding by way of a regulatory offence is more serious than by way of a contravention for which only administrative monetary penalties are available.

[109] I agree with the Board's conclusion that the language of the regulation to be read in context of s. 36.2(1)(e) and (g) indicates that the legislature intended that due diligence apply to determination of penalty, but not to the assessment of whether the contravention has been proven. I recognize that strict liability is presumed, but in my view, considering that the provision explicitly recognizes that due diligence applies to the penalty determination but not to whether the contravention has been made out rebuts the presumption.

[110] I further agree with the Board's conclusion that reference to other administrative penalty schemes, such as in the *Forest and Range Practices Act*, S.B.C. 2002 c. 69 and in the *Wildlife Act*, S.B.C. 2004, c. 31 which explicitly state that due diligence is a defence, lends further support to the conclusion that if it were intended that due diligence be available it would be as a defence to the contravention, the regulation would explicitly provide for it.

[111] In my view, the Board properly applied the *Sault Ste. Marie* analytical framework when it concluded that: the overall regulatory pattern, the subject matter of the administrative monetary penalty regime, the importance of the penalty and the

language used by the legislature meant that properly interpreted, a defence of due diligence is not available as a defence to the contraventions in issue.

Was the Delegate's Penalty Procedurally Unfair

[112] The Report to SDM, that the petitioner had the opportunity to respond to, did not make any recommendations with respect to the quantum of the monetary penalty. After the Delegate found that the contravention was made out, the petitioner did not have an opportunity to make separate submissions as to the appropriate penalty.

[113] The petitioner argues that being forced to make submissions on penalty before it was determined whether the petitioner knew whether the contravention had been made out, and without knowing what facts underpinned the contravention, is a structural fairness defect.

[114] The Board found that the procedure adopted by the Delegate was not unfair. First, the petitioner knew that the Delegate might determine whether the petitioner contravened the *Code* and might impose an administrative monetary penalty at the same time because the petitioner requested an opportunity to address sanction if a contravention was found. Second, the Delegate provided the petitioner the report which formed the basis for the recommendations to the statutory decision maker. Third, the petitioner was invited to provide any additional information and evidence the petitioner wished to rely on. Fourth, the Delegate provided a document outlining the procedure the Delegate planned to follow, and the factors listed in the Regulation the Delegate was required to consider when imposing an administrative monetary penalty.

[115] The Board found that the petitioner had a sufficient basis to understand the case it was required to make and how to make it, including the need to make submissions relevant to the establishment of a potential administrative monetary penalty. The petitioner had sufficient guidance to make effective submissions on the penalty quantum at the time of the hearing if it desired to do so. Rather than making those submissions the petitioner sought to have the process staged in two steps.

[116] The Board also found that the *Act* requires that a person be given an opportunity to be heard before a finding of contravention is made but does not prescribe a process to which this opportunity must conform. It is therefore open to a decision maker to set a process, so long as it is fair. A party does not have the right to assert that a particular process be followed and in this case the petitioner was notified of the process for the OTBH Notice and did not identify any significant barriers to participation in this process.

[117] In any event, the Board concluded:

[217] If, however, and unfairness occurred because the Delegate did not grant the appellant a separate opportunity to make submissions regarding the quantum of the administrative penalty or because the appellant did not have all of the advisory documentation that the Delegate had (i.e. the Handbook and Ministry penalty table) when making the Determination, the presence of an appeal process cures the defect. As indicated previously, the Appellant did not make use of this appeal to make submissions regarding the quantum of the administrative penalty.

The Petitioner's Arguments

[118] The petitioner argues that it is a basic principle of fairness that the facts or culpability must be determined before a sentence can be imposed for what has been found to be the contravention: *Watson v. BC Securities Commission*, 1999 BCCA 625, at para. 82.

[119] The petitioner submits that it was not possible to make informed submissions without knowing what, and why, it has found to have done wrong. They posit that the Board avoided answering this question and the suggestion that the appeal proceedings cured it was “no cure at all.”

[120] The Board's process was not fair because it repeated the unfairness perpetrated by the Delegate. As the hearing before the Board was a *de novo* hearing, again the petitioner was precluded from knowing whether the contravention was made out and if so, what the facts were underlying the contravention.

The Respondent's Arguments

[121] The respondent submits that the Board did not err in concluding that the Delegate's procedure was not unfair, but in any event any procedural unfairness arising from how the penalty was assessed was cured by the fresh process undertaken by the Board.

[122] It is well settled that a full and fair hearing *de novo* will generally cure procedural unfairness by an original administrative decision maker: *British Columbia (Attorney General) v. 992704 Ontario Limited*, 2023 BCCA 346 at para. 68. In this case, the appeal proceeded by way of a hearing *de novo* in which the Board had the discretion to conduct the hearing based on evidence presented afresh, based on the record before the original decision maker, or based on a combination of both. The Board's role was not to merely review the determination but to come to its own conclusion, which it did.

[123] The respondent submits that the Board correctly found that even if the petitioner's complaints had merit, the appeal undertaken by the Board cured any defect by affording the petitioner the opportunity to make submissions on the quantum of the administrative monetary penalty with the benefit of information that was not available to the petitioner at the time of the OTBH Notice.

Discussion

[124] The standard of review to be applied to the Board's conclusion that the Delegate's procedure was fair is correctness. In my view, the Board's conclusion that the process engaged in by the Delegate was not unfair was correct. The Board found that the petitioner had a sufficient basis to understand the case it was required to make and how to make it, including the need to make submissions about a potential administrative penalty should a contravention be found. A party does not have the right to assert that a particular process be followed. The Board's conclusion that on the facts of this case the petitioner had a reasonable opportunity to make its views known to the Delegate and thus Delegate's procedure was not unfair, is in my view without error.

[125] A similar argument was made before Justice Branch in *Best Import Auto Ltd. v. Motor Dealer Council of British Columbia*, 2018 BCSC 834, where he recognized that in some instances the duty of fairness will require a two-hearing process but not every case:

[51] Best Import's suggestion that it was unable to know exactly how to properly address potential penalties without knowing the precise findings on liability is belied by submissions made at trial every day in these courts, as well as before an array of other administrative tribunals. Any suggestion to the contrary sought to be derived from Lambert J.A.'s oral reasons in *Watson v. British Columbia Securities Commission*, 1999 BCCA 625, is distinguishable based on the more penal aspects of the securities violations at issue in that case, where the issue was characterized as one of "guilt" (para. 11). I also note that counsel for the commission in that case essentially conceded the general entitlement to a separate hearing, and was relying primarily on waiver to avoid the suggestion that two hearings needed to occur in the case before the court (para. 12).

[126] In *Asfaw v. Chartered Professional Accountants of Manitoba*, 2023 MBCA 103 at paras. 8 and 9, the Court considered *Best Imports* when it concluded that a separate penalty hearing was not required on the facts of the case before it. The appellant knew at the time of the hearing what the possible and requested sanctions were, and she had two opportunities to make submissions regarding penalty.

[127] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 the Court set out the purpose of procedural fairness and the factors relevant to determining the context of procedural fairness, as summarized by Branch J., in *Best Import*:

[34] The Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817 at para. 22, stated that the purpose of procedural fairness is to:

...ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[35] The court continued, at paras. 23-28, to outline a number of non-exhaustive factors relevant to determining the context of procedural fairness:

a) The nature of the decision being made and the process followed in making it.

- b) The nature of the statutory scheme and the terms of the statute pursuant to which the body operates. Greater procedural protection is called for when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted.
- c) The importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated. In particular, “A high standard of justice is required when the right to continue in one’s profession or employment is at stake.... A disciplinary suspension can have grave and permanent consequences upon a professional career”: *Kane v. Board of Governors of the University of British Columbia*, 1980 CanLII 10 (SCC), [1980] 1 S.C.R. 1105 at 1113.
- d) The legitimate expectations of the person challenging the decision.
- e) The choices of procedure made by the agency itself, particularly when the agency has expertise in determining what procedures are appropriate in the circumstances.

[128] Whether the statute provides for a determination of culpability before penalty is considered is a “highly material aspect of the inquiry”: *Best Import* at para 49. The petitioner argues that the relevant provisions of the *Act*, contemplate a two-stage hearing:

Contraventions

36.1 (1) After giving a person an opportunity to be heard, the chief inspector may find on a balance of probabilities that the person has contravened or failed to comply with any of the following provisions:

- (a) a prescribed provision of this Act, the regulations or the code;
- (b) a provision of an order made under this Act;
- (c) a term or condition imposed under section 10 (1.1), (2), (2.01), (3), (4) or (7), 17 (5) or 38 (4) of this Act.

(2) If a corporation contravenes or fails to comply with a provision referred to in subsection (1), a director, officer or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure also contravenes or fails to comply with the provision and is also liable to an administrative penalty under section 36.2.

(3) If an employee, contractor or agent of a corporation contravenes or fails to comply with a provision referred to in subsection (1) in the course of carrying out the employment, contract or agency, the corporation also contravenes or fails to comply with the provision and is also liable to an administrative penalty under section 36.2.

Administrative penalties

36.2 (1) If the chief inspector finds that a person has contravened or failed to comply with a provision referred to in section 36.1 (1), the chief inspector may, after considering the prescribed matters, impose an administrative penalty on the person in an amount that does not exceed the prescribed limit.

(2) A person may be prosecuted under this Act for a contravention or failure in relation to which an administrative penalty has been imposed.

(3) In imposing a sentence for an offence under this Act, the court may consider an administrative penalty imposed in relation to the same matter.

(4) If a person is convicted of an offence under this Act, an administrative penalty may not be imposed on the person in respect of the same circumstances that gave rise to the conviction.

[129] The petitioner submits that these provisions are indistinguishable from the governing statutes considered in two professional licensing cases: *Brock-Berry v. Registered Nurses Assn. of British Columbia* (1995), 1995 CanLII 2668 (BC CA), 12 B.C.L.R. (3d) 169 (C.A.) and *Finch v. Association of Professional Engineers and Geoscientists of British Columbia* (1994), CanLII 1686 (BC CA), 90 B.C.L.R. (2d) 98 (C.A.). In both cases, the Court concluded that the statute had two distinct elements requiring a two-stage analysis.

[130] I agree that the provisions of the *Act* are similar to the provisions considered in *Brock-Berry* and *Finch*; however, the language of the statute is not dispositive of whether a two-stage process is required. The factors identified in *Baker* must be considered. In this case, I find the following factors relevant to the analysis:

- a) The Delegate did not suggest that there would be a two-stage process, in fact the petitioner understood that the Delegate could proceed to determine whether the contravention was made out and to assess a penalty at one time because the petitioner asked for a second hearing if the contravention was proven;
- b) There is no evidence that the Delegate normally holds two hearings;

- c) Although the potential administrative monetary penalty is significant, the revocation of a permit or some other penalty that would prevent the petitioner from carrying on mining activities was not an available sanction;
- d) The petitioner was afforded the opportunity to provide submissions on the appropriate penalty but chose not to;
- e) Requiring a mandatory two-stage process could impose a substantial administrative burden on a Delegate; and
- f) The petitioner was afforded a *de novo* hearing on appeal to the Board.

[131] The question of whether the Board's process was procedurally unfair is reviewable on the fairness standard under s. 59(5) of the *ATA*. I do not accept the petitioner's argument that the Board's *de novo* appeal process repeated the unfairness perpetrated by the delegate because the Board also engaged in a two-stage process.

[132] I do not accept that because the Board chose a single hearing rather than bifurcating the penalty portion that its process was unfair. The petitioner had more than enough information and opportunity to address the quantum of the penalty in the event that the Board agreed with the Delegate's decision that the contravention had been made out.

[133] The petitioner knew that it was possible, if not probable, that the Board would not bifurcate the hearing. The petitioner knew the quantum of penalty that the Delegate had determined was appropriate and knew the basis for which the Delegate had arrived at the quantum of the penalty. The petitioner had more than enough information to make meaningful submissions about both whether the contravention was proven and if so, what the appropriate administrative monetary penalty was.

[134] The petitioner has not established that the Board's process was unfair.

Conclusion

[135] The petition is dismissed.

“J. Walker, J.”