

PUBLIC HEALTH APPEAL BOARD

**IN THE MATTER OF THE *PUBLIC HEALTH ACT*
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF THE APPEAL OF THE DECISION
OF THE ALBERTA HEALTH SERVICES WAIVER
COMMITTEE, DATED DECEMBER 15, 2025**

PANEL: Paul Bourassa, Chair
Vicki Wearmouth, Member
David Rolfe, Member

BETWEEN:)	
)	
)	
Wodr Thermal Spas Ltd.)	Graeme Horton
)	
(Appellant))	
)	
- and -)	
)	
)	
ALBERTA HEALTH SERVICES)	Connor Fleming,
)	Alberta Health Services,
)	for the Respondent
(Respondent))	
)	
)	
)	
)	Heard: February 13, 2026
)	
)	
)	

DECISION AND REASONS FOR DECISION

The Appeal

[1] This appeal is brought pursuant to section 5 of the *Public Health Act*, R.S.A. 2000, c. P-37 (the "Act"). The Board's role on appeal is to consider the matter on its merits and to determine

whether the decision of the Alberta Health Services (“AHS”) Waiver Committee (the “AHS Waiver Committee”) should be confirmed, varied, or reversed. In doing so, the Board interprets and applies the relevant statutory and regulatory provisions to the evidence before it. The Board’s task is not to conduct a judicial review of the AHS Waiver Committee’s decision (the “AHS Waiver Decision”), but to determine, on the evidence before it, whether the statutory requirements were met.

[2] In determining whether to confirm, vary, or reverse the AHS Waiver Decision, the Board must be satisfied, based on the evidence before it, that the statutory requirements for the granting of a waiver have been met. This includes whether there is hardship in the particular case and whether an adequate degree of protection of the public health would be maintained. The Board considers these questions on the merits of the evidence and submissions before it.

[3] This appeal is brought by Graeme Horton, on behalf of Wodr Thermal Spas Ltd. (the “Appellant”). The Appellant applied to the AHS Waiver Committee for a waiver in connection with the proposed construction and operation of a thermal spa in downtown Edmonton (the “Application for Waiver”).

[4] The Appellant sought a waiver of section 3(2)(c) of the *Public Swimming Pool Regulation*, Alta Reg 204/2014 (the “PSPR”). The AHS Waiver Committee refused to grant the Application for Waiver.

[5] The Appellant appeals the AHS Waiver Decision to the Public Health Appeal Board (the “Board”). The Appellant requests the Board reverse the AHS Waiver Decision and grant the Application for Waiver, or in the alternative, refer the Application for Waiver back to the AHS Waiver Committee with directions that it reconsider the PSPR’s applicability to the Appellant’s operation of its thermal spa, as well as the applicability of the *Waiver Regulation* (Alta Reg 298/2003) (“*Waiver Regulation*”).

[6] The Appellant further argued that the AHS Waiver Committee erred in the interpretation of “individual” in section 3(2)(c) of the PSPR; erred in concluding it lacked waiver authority and failed to meaningfully engage with the evidence provided. Further, the Appellant also argued that the AHS Waiver Committee misapplied the applicable hardship test.

[7] The appeal hearing took place on February 13, 2026 (the “Appeal Hearing”), before a three-member panel of the Board. The Appeal Hearing was conducted virtually via the Board’s secretariat in Edmonton, Alberta.

[8] Following the Appeal Hearing, the Board invited the parties to make further written submissions by February 20, 2026 to assist the Board. The additional submissions were provided by the Appellant but not AHS.

Board Decision

[9] In a letter to the parties on March 17, 2026, the Board issued its decision to confirm the AHS Waiver Decision, with detailed reasons to follow. These are the Board’s detailed reasons.

Regulatory Framework

In making its decision, the Board is governed by the following provisions.

PSPR

1 In this Regulation,

(f) “patron” means an individual who enters the public swimming pool premises and might or might not enter or use the public swimming pool;

(g) “pool” means a public swimming pool and the public swimming pool’s premises;

(j) “public swimming pool” means a structure that contains water that is used for recreational, therapeutic or other similar purposes and includes a swimming pool, wading pool, water spray park, whirlpool and any fountain or other artificially created pool of water;

Application

3 (1) This Regulation applies to all pools.

(2) This Regulation does not apply to

(a) a structure containing water constructed for the sole use by owners of a single family dwelling and their families and guests,

(b) a natural pool, or

(c) a pool of water that is drained, cleaned and filled after each use by each individual.

Waiver Regulation

1 (1) A person to whom a provision of any of the following regulations under the Act applies may make a request to the regional health authority for an order waiving or mitigating the application of the provision:

(g) the *Public Swimming Pools Regulation* (AR 204/2014) except sections 10 and 13(1) and (2);

Order

4 (1) The regional health authority may grant an order waiving or mitigating the application of a provision of a regulation where it is satisfied that

(a) application of the provision would cause a hardship to the applicant in the particular case, and

(b) an adequate degree of protection of the public health would be maintained.

(2) The regional health authority may make an order under subsection (1) subject to any terms and conditions the regional health authority considers appropriate to ensure an adequate degree of protection of the public health.

(3) An order under subsection (1) must be limited to the particular case in respect of which the application was made.

Appeal of decision

7 A person who is directly affected by a decision of a regional health authority to grant or refuse an order under this Regulation and considers himself or herself aggrieved by the decision may appeal the decision to the Public Health Appeal Board under section 5 of the *Act*.

Background

[10] The Appellant is in the planning phase of construction of a thermal spa in downtown Edmonton that will consist of a mixture of hot and cold plunge tubs, showers, and saunas (the "Edmonton Spa"). In terms of configuration, the Edmonton Spa will be composed of several private suites that will be rented out separately for each separate booking session.

[11] Each suite will in turn comprise: a washroom; one tub that can be filled with cold water and another separate tub that can be filled with hot water (the "Tubs" or singular "Tub"); a sauna; and a shower. The Tubs are intended to be single use, will not be running continuously, and will not be outfitted with a filtration system. The Tubs are not whirlpools, flotation tanks, or public pools.

[12] With respect to the Edmonton Spa's cleaning regimen, the Appellant states that Tubs in each suite will be drained, thoroughly cleaned, and filled after/between each booking session. The Appellant's intention is to use nonporous concrete Tubs.

[13] The Appellant originally developed and operated this concept in British Columbia, where the provincial regulations exempt "a pool that is drained and cleaned following each use" without reference to "each individual". At its Chilliwack spa location (the "Chilliwack Spa"), it operates within the laws of British Columbia as the Tubs are exempt from pool regulations because they are "drained, cleaned and filled between each use".

[14] The Appellant indicates that around 95% of the Chilliwack Spa bookings arise from adult couples who book a session and use together. The Appellant indicates that the Edmonton Spa is intended to operate on a similar business model and anticipates that the vast majority of the Appellant's business will be generated through bookings by couples.

[15] When in the planning stages for the Edmonton Spa, which included some sunk costs, the Appellant proactively engaged with AHS to understand the regulatory requirements before commencing operations.

[16] AHS' position was that because of the wording of the PSPR, which is different from that of the applicable regulatory regime in British Columbia, a waiver to comply with the PSPR was required from the AHS Waiver Committee.

[17] In or about November 2025, the Appellant applied to AHS for a waiver under the *Waiver Regulation*. The Application for Waiver states that at its Edmonton Spa, the Appellant intends that each Tub will be drained, cleaned, disinfected, and refilled between bookings. Furthermore, the Appellant argued that if the AHS Waiver Committee interpreted s. 3(2)(c) of the PSPR to require cleaning after each person, that would prevent couples from sharing the Tub in the same booking. The Appellant requested a waiver to allow cleaning between bookings rather than between individuals, while promising to maintain full public health protections.

[18] In support of the Application for Waiver, the Appellant submitted the following arguments:

- i. The Edmonton Spa will operate on the basis of individual bookings for private suites. This is therefore not a scenario in which there will be communal bathing involving a group of more than two individuals;
- ii. Use of the Edmonton Spa will be limited to adults who will be executing a waiver of liability prior to accessing the spa that will outline that the individuals accept physical risks;
- iii. Each spa suite, including the Tubs, will be cleaned after each booking;
- iv. Other spa businesses are operating under the same model that is being proposed in this instance (i.e. there are other spas that are allowing bookings by couples);
- v. The requirement that the Edmonton Spa must comply with the PSPR is at odds with the regulatory regimes applicable to hotel jet tubs, as well as flotation tanks, which are currently excluded from the application of the PSPR; and
- vi. Other jurisdictions permit the use of single-fill Tubs by couples.

[19] With respect to the issue of hardship in this particular case, the Appellant stated that only allowing for individual usage of the Tubs would undermine the viability of his business given the 95% of his anticipated guests would be attending with a companion (and indeed this is the case at the Chilliwack Spa).

[20] Furthermore, obliging the Appellant to comply with the PSPR filtration and water treatment requirements would likewise constitute a particular hardship as this would change the nature of the business' service offering, which is striving to create a natural and chemical-free environment. The Appellant went so far as to indicate that he would potentially not move forward with the business if the Edmonton Spa had to comply with the PSPR as this would compromise the unique experience intended to be offered.

[21] With respect to how the public health would be protected were a waiver to be granted, the Appellant indicated that because Tubs would be used exclusively in a private context, the risk of transmission of any illness or infection as a result of joint Tub usage would be low, particularly given that any couples who had a booking together would in all likelihood already be in a close relationship. Accordingly, this is not a situation in which there would be a high risk of a widespread outbreak since direct transmission would only be possible between two individuals. In this regard, the Edmonton Spa would present similar risk to, or less risk than comparables that are not subject to the PSPR, such as hotel jet tubs or flotation tanks.

[22] The Appellant further underscored that the Edmonton Spa will maintain a cleaning schedule in which the Tubs will be drained, cleaned and refilled between sessions.

[23] AHS did not advance a position as part of the waiver hearing. Otherwise stated, AHS did not agree to, nor oppose, the Application for Waiver.

[24] AHS did, however, submit that should a waiver be granted, AHS was of the view that the waiver needed to be accompanied by certain conditions, being: (a) any booking needed to be limited to 2 individuals; and (b) minors should not be permitted to attend the Edmonton Spa.

[25] Regarding the legislative application of the PSPR to the Edmonton Spa, AHS explained that under its interpretation of the term "pool" contained in s. 3(1) of the PSPR, AHS' view was

that the Tubs would fall under the definition of “pool”, such that the PSPR and its accompanying requirements would apply to the Edmonton Spa.

[26] In terms of the exception contained in s. 3(2)(c) of the PSPR which exempts “a pool of water that is drained, cleaned and filled after each use by each individual”, AHS’ position is that the Appellant could qualify for this exception if the Tubs were drained, cleaned, and refilled after an individual used the tub individually, and then exited the tub.

[27] Stated otherwise, AHS’ interpretation of the legislation was that if the Tub were to be used concurrently by two individuals, it would not qualify for the exemption contained in s. 3(2)(c), the end result being that the PSPR would apply to the Edmonton Spa.

[28] Accordingly, AHS’ position was that whilst the Appellant could avoid the application of the PSPR if the Edmonton Spa was to only permit one individual in the Tubs at a time, a waiver needed to be granted to the Appellant in order for the Edmonton Spa to accommodate two people in one of the Tubs simultaneously without having to comply with the requirements of the PSPR.

[29] AHS explained that if a waiver was granted, given the services that the Appellant will be offering, the Appellant would not constitute a “personal service” operator that would fall under the *Personal Service Regulation*, Alta Reg 1/2020. Accordingly, if a waiver was issued, the Edmonton Spa would fall outside of AHS’ public health oversight, such that AHS would only become involved with the Edmonton Spa in the event there was a public complaint that gave rise to nuisance concerns, or in the event of an outbreak that required communicable disease follow-up.

[30] In response to the Appellant’s argument that there is a discrepancy between how public health requirements for flotation tanks and hotel jet-tubs are being enforced, AHS responded that:

- i. Hotel jet-tubs are subject to a different regulatory regime given that hotels fall under the *Housing Regulation and Minimum Housing Standards* and the specific requirements contained therein;
- ii. Flotation tanks have been expressly excluded from the PSPR and the Alberta Health Pool Standards January 2014 (Amended January 2018) (“Pool Standards”). AHS drew specific attention to page 5 of the Pool Standards which states:

The [PSPR] and the Pool Standards together govern the operation and maintenance of pools to ensure safe water quality and a safe sanitary swimming environment for Albertans. The [PSPR] and the Pool Standards do not govern the operation and maintenance of flotation tanks.

[31] AHS did not have further information as to the genesis or rationale behind the exemption of flotation tanks from the PSPR but highlighted that this was a decision that was made by Alberta Health, as opposed to AHS.

[32] AHS has, however, been complying with this directive and does not currently apply the PSPR to flotation tanks.

[33] On the issue of whether other spa businesses are currently operating similar business models, AHS made note that with increased activity in the wellness industry, AHS has observed more businesses providing these types of thermal spa services. AHS further noted that while some of these businesses operate with a pool permit in place (the corollary being that they are compliant

with the PSPR), other operators have opened without a pool permit or compliance with the PSPR. In these instances, AHS has undertaken inspections of these businesses, and engaged in enforcement when needed, including the issuance of Executive Officer Orders, including indefinite closure orders.

[34] AHS did not make any express submissions regarding whether or not it believed a particular hardship was present in the current instance. AHS did, however, state its belief that if a waiver were granted to the Applicant in this instance, this would likely result in a scenario in which the same waiver would need to be granted to similar businesses in the future who wanted to offer comparable services to couples.

[35] With respect to the protection of the public health, AHS did not make submissions as to whether it considered the public health would be appropriately protected or not in the event a waiver were to be granted. That being said, the Board does take note of the fact that the Applicant's specific cleaning regime, particularly what cleaning products are to be used, has not been finalized at this juncture and remains an unresolved issue.

[36] On December 19, 2025, the AHS Waiver Committee issued the AHS Waiver Decision denying the Application for Waiver on the following grounds:

- i. The AHS Waiver Committee interpreted section 3(2)(c) of the PSPR to require that only one individual use the pool before draining, cleaning, and refilling;
- ii. The AHS Waiver Committee concluded that the Appellant was "for all intents and purposes, requesting a waiver of the PSPR in its entirety", which it found to be beyond its jurisdictional authority; and
- iii. The AHS Waiver Committee found that the Appellant had not demonstrated "particular hardship" because other similar businesses face the same regulatory constraints.

Timing of Appeal

[37] Section 5(3) of the *Act* requires a notice of appeal to be served within 10 days after the person appealing receives notice of the decision being appealed.

[38] The AHS Waiver Committee Decision is dated December 19, 2025. The Board Secretariat received the Appellant's Notice of Appeal on December 23, 2025.

[39] The Board is satisfied that the appeal was commenced within the time required by section 5(3) of the *Act*.

Grounds of the Appeal

[40] Although grounds are not expressly pleaded, it is reasonable to infer that the Appellant disagrees with the AHS Waiver Committee's reasons for refusal and intends to advance substantially the same position and arguments that were raised in support of the Application for Waiver before the AHS Waiver Committee.

[41] Based on the Application for Waiver materials provided with the Appellant's submissions, those arguments may be summarized as follows:

- i. The Appellant operates private suites containing standard, non-jetted Tubs that are reserved for the exclusive use of a single booking party, most often a couple;
- ii. Each Tub is drained, cleaned, disinfected, and refilled between bookings;
- iii. The current interpretation of section 3(2)(c) of the PSPR requires cleaning after each individual user, which prevents two individuals from sharing a Tub during the same booking;
- iv. The Appellant seeks a waiver to permit cleaning between bookings (which it anticipates may involve two users) rather than between individual users, while maintaining full public health protections;
- v. The business model is unique and is premised on providing private, exclusive, natural, and luxury experiences, and adding chemicals and circulation systems would be inconsistent with the spa's values and would degrade the customer experience;
- vi. Limiting bookings to a single individual would undermine the viability of the business, as approximately 94% of guests attend with a companion;
- vii. Draining, cleaning, and refilling the Tubs between individual users during a single booking would be invasive and disruptive to the guest experience;
- viii. The Appellant proposes to continue draining, cleaning, disinfecting, and refilling the Tubs between bookings, including wiping down all surfaces with HOCl. Hypochlorous Acid (HOCl) is a microbial compound often used as a disinfecting agent. The Appellant submits that similar health protection protocols have been successfully implemented in other Canadian jurisdictions.

Legal Issues

[42] The legal issues before the Board are:

- i. Issue 1 – Interpretation of section 3(2)(c) of the PSPR
- ii. What is the proper interpretation of section 3(2)(c) of the PSPR, and in particular whether the phrase “each individual” permits simultaneous use of a tub by more than one person during a single booking session. Arguably, the Appellant has conceded this issue by applying for a waiver of the condition (see Issue 2), as an inapplicable provision could not be waived. Further, this is an appeal of the AHS Waiver Decision, which did not find that the PSPR was applicable, but proceeded on the assumption that it did. However, this issue is inextricably bound up with the other issues below and consideration of the application of the PSPR is part of the relief sought, accordingly, the Board has proceeded to address this issue.
- iii. Issue 2 – Scope of the Waiver Authority

Whether the relief sought by the Appellant is available through the waiver mechanism under the *Waiver Regulation*, having regard to the scope and limits of that authority.

iv. Issue 3 – Hardship (if necessary)

If the waiver mechanism is available, whether the Appellant has established hardship in this particular case within the meaning of the *Waiver Regulation*.

Jurisdiction

[43] There are no objections to the Board's jurisdiction to hear the Appeal.

Documents/Exhibits

[44] Prior to the commencement of the hearing, the following documents were entered as exhibits by agreement of the parties:

- i. Exhibit A - Notice of Appeal (NOA)
- ii. Exhibit B - AHS Waiver Committee – AHS Waiver Decision and Hearing Document Bundle
- iii. Exhibit C – Appellant Disclosure/Submissions
- iv. Exhibit D – AHS Disclosure/Submissions (Original Decision and Hearing Document Bundle)
- v. Exhibit E – will leave open unless necessary

[45] Following the Appeal Hearing, the Board invited and received further written submissions and additional materials from the parties:

- i. From AHS - Waiver Decision - The Baby Spa (Tara Machuik)
- ii. From AHS - Waiver Decision Master Pools - Executed with Appendix
- iii. From Appellant - Commentary Alberta Law Review
- iv. From the Appellant - Additional Written Submissions Response Feb 20

[46] The Appeal Hearing proceeded by way of written and oral submissions. AHS called Kevin Jeroncic, Public Health Inspector, who provided limited viva voce evidence and responded to questions from the Board. The Board also engaged with the parties through questions to clarify their positions and the evidentiary record, including matters raised in both written and oral submissions.

Submissions of the Appellant

[47] The submissions of the Appellant can be summarized as follows and relate specifically to the Appellant's disagreement with the AHS Waiver Decision:

- i. The Appellant submitted that the term "individual" should be understood as a distinct user group or user session rather than strictly a single person;

- ii. The Appellant submitted that the AHS Waiver Committee did have the authority to grant the requested waiver;
- iii. The Appellant submitted that the AHS Waiver Committee failed to meaningfully engage with the evidence provided and misapplied the “particular hardship” test under section 4(1)(a) of the *Waiver Regulation*; and
- iv. The Appellant submitted that the AHS Waiver Committee applied an unduly narrow interpretation of the statutory test (the “Hardship Test”)

[48] The Appellant submitted that the narrow reading of the PSPR and the lack of procedural engagement has resulted in a denial that threatens the very viability of its business, and further that its business is distinct from other wellness operators.

[49] In addition to descriptions and usage profiles of intended users of the service, the Appellant argued that other jurisdictions interpreting similar provisions more broadly including British Columbia, Saskatchewan, Europe and Japan.

[50] The Appellant added additional context relating to public health protection by describing in detail those factors showing risk is extremely low to negligible, as well as detailing cleaning procedures and client waiver protocols.

[51] The Appellant attached and referenced case law (*Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 (“*Rizzo*”)) and argued that the law of statutory interpretation in Canada is governed by that case, and that it requires a decision-maker to take into account the purpose of the legislation in interpreting its language.

Submissions of the Respondent

[52] In a letter to the Board dated February 4, 2026, counsel for AHS advised that AHS would not submit additional documents or submissions prior to the hearing date and would rely on the AHS Waiver Decision and submissions appended to it.

[53] The above-noted documents consist of:

- a) the AHS Waiver Decision and reasons;
- b) the Applicant’s Application for Waiver;
- c) the Applicant’s Written Submissions;
- d) the Applicant’s Additional Submissions;
- e) the Respondent AHS’s Written Submissions;
- f) the Respondent’s Additional Submissions;
- g) the *Waiver Regulation*; and
- h) the PSPR.

Analysis and Reasons

[54] The Board has considered all of the evidence and submissions before it, including the additional written submissions and materials provided following the Appeal Hearing. Those additional materials, including the waiver decisions and commentary on statutory interpretation, did not alter the Board's analysis or conclusions in this matter.

Standard of Review

[55] The Board recognizes that internal administrative appeals do not follow a single rigid standard of review. In this appeal, the Board's task is to determine, on the evidence before it, whether the statutory requirements for the granting of a waiver have been met. This requires the Board to interpret and apply the relevant provisions of the Act, the PSPR, and the *Waiver Regulation*.

[56] After thorough consideration of judicial guidance provided, and reading the relevant sections of the Act harmoniously with the intention of the legislature, the Board is satisfied that the appropriate standard of review to be applied in this Appeal has been articulated in section 62(1) of the Act. This standard is: whether there are reasonable and probable grounds to believe either that a nuisance exists on the property, or that there is a contravention of the Act or the regulations and standards based on an inspection or a report or test, such that the order under appeal is warranted.

[57] In this case, appeal is expressly authorized by the PSPR and the Board interprets the applicable standard of review of the AHS Waiver Decision to be reasonableness, with the exception of questions of law to which the AHS Waiver Committee should be held to the standard of correctness.

[58] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the Supreme Court of Canada provided instruction on the application of the reasonableness standard of review. The focus of a reasonableness review is on the reasons. A decision will be reasonable if it is both internally consistent and justified in light of the legal and factual constraints that bear on the decision.

[59] Unlike the judicial review approach established in *Vavilov*, the standard of review adopted by the Board represents a hybrid procedure. This approach involves reviewing all the relevant records supplemented with *viva voce* (live witness oral) evidence, while also allowing portions of the hearing to be conducted on the documentary record.

[60] As the Board is not a court, it is not bound by the strict rules of evidence applicable to courts. The Board's authority is limited to confirming, reversing, or varying the AHS Waiver Decision, without extending beyond these options as provided in the Act.

[61] To apply this analysis to the current appeal, the Board is tasked with determining whether or not the AHS Waiver Decision was reasonable. Were there reasonable and probable grounds to conclude that the waiver sought could not be granted in these circumstances? However, with respect to interpretations of law, no such deference is required and the Board will review the AHS Waiver Decision on the standard of correctness.

Issue 1: Interpretation of section 3(2)(c)

[62] The interpretation of section 3(2)(c) of the PSPR is central to this appeal. In addressing this issue, the Board applies the modern principle of statutory interpretation as set out in *Rizzo*.

[63] This interpretation is also consistent with the evidence provided by AHS through Kevin Jeroncic, Public Health Inspector, who explained how the PSPR is applied in practice.

[64] Section 3(2)(c) provides that the PSPR does not apply to:

“a pool of water that is drained, cleaned and filled after each use by each individual.”

[65] The Appellant submits that the term “individual” should be interpreted to mean a booking session or user group, rather than a single person, relying on purposive statutory interpretation principles.

[66] The Board is not persuaded by this submission. The language of section 3(2)(c) is clear.

[67] The word “individual” is not defined in the PSPR. Applying the modern principle of statutory interpretation, the term must be read in its grammatical and ordinary sense, in its context, and in light of the scheme and object of the legislation.

[68] The Board accepts that the modern principle of statutory interpretation articulated in *Rizzo* requires that statutory language be read in its entire context and in a manner consistent with the scheme and object of the legislation. However, purposive interpretation does not permit a decision-maker to depart from clear and unambiguous language or to substitute a different meaning for the words chosen by the Legislature.

[69] The ordinary meaning of “individual” is a single person. The inclusion of the phrase “by each individual” in section 3(2)(c) reflects a deliberate legislative choice to require cleaning after each person’s use, rather than after a group or booking session. This interpretation is consistent with the approach taken by the AHS Waiver Committee and AHS, and the Board reaches the same conclusion on its own analysis.

[70] To interpret “individual” as meaning a booking session or a couple would substitute a different concept for the wording chosen by the Legislature and would effectively amend the PSPR. This is not within the Board’s interpretive authority.

[71] The Board is bolstered in this conclusion by the definition of “patron” in section 1(f) of the PSPR, which expressly refers to an “individual” who may make use of the swimming pool. This is consistent with an interpretation of the PSPR that contemplates individual use equating to use by a specific and individual person.

[72] Accordingly, the Board finds that the Appellant’s proposed operation, which permits simultaneous use by two individuals, does not fall within the exemption in section 3(2)(c). While the AHS Waiver Decision does not actually address this as the issue was essentially assumed for purposes of that proceeding, applying the PSPR to the proposed operation was both correct and reasonable.

[73] The Board has considered the Appellant’s submissions on this issue, including its reliance on *Rizzo*, but is not persuaded that the interpretation advanced is consistent with the text, context, and scheme of the PSPR. To the extent necessary, any implicit decision of the AHS Waiver Committee is confirmed.

Issue 2: Scope of the Waiver Authority

[74] The Board must accordingly determine whether the requested relief falls within the scope of the authority established by the *Waiver Regulation*. This accords with the Appellant's alternative submission, namely that the requested relief may be granted through the waiver mechanism under the *Waiver Regulation*.

[75] The Board is not persuaded that the waiver power can operate in the manner requested in this case.

[76] Section 3(2)(c) establishes a condition under which the PSPR does not apply. It functions as a threshold provision: if the condition is met, the PSPR does not apply; if it is not met, the PSPR applies in full.

[77] The waiver sought by the Appellant would permit cleaning after a booking session rather than after each individual. This would effectively change the condition that determines whether the PSPR applies at all.

[78] In substance, the relief sought would convert a per-individual exemption into a session-based exemption. In the Board's view, that is not the waiver of a discrete operational requirement within the existing framework, but an alteration to the way the exemption operates in this case.

[79] The waiver authority under the *Waiver Regulation* permits relief from the application of provisions in particular cases. It does not authorize the Board to alter the structure or scope of an exemption in the PSPR or to create a new category of exempt activity.

[80] Accordingly, the Board finds that the requested relief is not available through the waiver mechanism. The Board therefore confirms the AHS Waiver Decision, which was on this point both reasonable and correct.

Issue 3: Hardship

[81] In light of the Board's conclusion that the waiver mechanism cannot operate in the manner requested, it is not necessary to determine whether the Appellant has established hardship in the particular case.

[82] In any event, the Board is not persuaded that the hardship advanced by the Appellant meets the statutory requirement of hardship in the particular case. The hardship described is primarily commercial in nature and arises from the general application of the PSPR to this type of business model.

[83] The Board agrees with AHS the Waiver Committee that such hardship is not particular to the Appellant but would apply to all operators in this sphere. Accordingly, the AHS Waiver Decision on this point is both reasonable and correct, and the Board confirms it.

Findings and Conclusion

[84] After reviewing the evidence and submissions of the parties, the Board makes the following findings. In doing so, the Board has applied the statutory framework set out above, including its role on appeal under section 5 of the Act, the requirements of section 4 of the *Waiver Regulation*, and the proper interpretation of section 3(2)(c) of the PSPR. The findings reflect the Board's consideration of the evidence and submissions in light of that framework.

- i. The PSPR defines “public swimming pool” as “a structure that contains water that is used for recreational, therapeutic or other similar purposes and includes a swimming pool, wading pool, water spray park, whirlpool and any fountain or other artificially created pool of water”. The project proposed by the Appellant meets the definition of a “public swimming pool”;
- ii. The PSPR, section 3(2)(c) states that the PSPR does not apply to “a pool of water that is drained, cleaned and filled after each use by each individual”;
- iii. The Appellant’s proposal to allow simultaneous use by more than one person during a booking session does not meet the exemption for “a pool of water that is drained, cleaned and filled after each use by each individual”. The Board’s role is to interpret and apply the PSPR as enacted. The wording “each individual” is clear and unambiguous, and cannot be amended by the Board;
- iv. The Board cannot grant the waiver of the applicable clause, as that would effectively alter the condition that determines when the PSPR applies by converting a per-individual exemption into a session-based exemption; and
- v. When considering whether the application of the PSPR as written caused a hardship, the Board determined that financial concerns are not unique to the Appellant and his business model.

[85] Based on the aforementioned findings, the Board confirms the AHS Waiver Decision of the AHS Waiver Committee.

Paul M. Bourassa, Chair
Public Health Appeal Board

Date: April 15, 2026