

Quick and Dirty SCC Administrative, Labour, Employment Review — Where We Were, Where We Are, Where We May Go*

1. The Last 20 Years – Where We Were

Administrative Law

Law Society of New Brunswick v Ryan, [2003] 1 SCR 247

- Judicial review of administrative decisions; correctness, reasonableness *simpliciter* and patent unreasonableness; pragmatic & functional approach determines standard.

Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch), [2001] 2 SCR 781

- Independence; administrative tribunals do not have constitutional guarantee of independence unless its particular actions trigger greater protections.

Employment Law

McKinley v BC Tel, [2001] 2 SCR 161

- Wrongful dismissal; threshold for allowing issue of aggravated damages to be determined by jury is sufficiency of evidence.

Wells v. Newfoundland, [1999] 3 SCR 199

- Wrongful dismissal; test for dismissal for cause for dishonest conduct is whether the dishonest conduct led to a breakdown in employment relationship.

Labour Law

Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, [2007] 2 SCR 391

- Workers and unions have a constitutional right to engage in collective bargaining.

Parry Sound (District) Social Services Administration Board v OPSEU, Local 324, [2003] 2 SCR 157

- Substantive rights and obligations of the *Human Rights Code* are incorporated into each collective agreement over which an arbitrator has jurisdiction.

Dunmore v. Ontario (Attorney General), [2001] 3 SCR 1016

- Freedom of association; Ontario's *Labour Relations Act* violates the right to freedom of association since it prevents agricultural workers from unionizing.

2. Where We Are Now

Administrative Law

Canada (Attorney General) v. Mavi, 2011 SCC 30

- Procedural fairness applies to administrative decisions; content determined by context.

Celgene Corp. v Canada (Attorney General), [2011] 1 SCR 190

- Standard of review; follow the two-step test set out in *Dunsmuir*.

Dunsmuir v New Brunswick, [2008] 1 SCR 190

- Standard of review; combining the reasonableness *simpliciter* and patent unreasonableness standards of review into *reasonableness* standard.

Employment Law

Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ), [2008] 2 SCR 561

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- Duty to accommodate; the test is whether, in considering the entire context and effect on the employment contract, the employer can accommodate without undue hardship.

Honda Canada Inc. v Keays, [2008] 2 SCR 362

- Reasonable notice & punitive damages; a breach of the Ont. *H. R. Code* cannot constitute an actionable wrong so the legal requirement for punitive damages is not met.

Evans v Teamsters Local Union No. 31, [2008] 1 SCR 661

- Mitigation; employee required to mitigate damages by returning to work for the same employer*.

Labour Law

Ontario (Attorney General) v. Fraser, 2011 SCC 20

- Right of Association; legislation that excludes workers from the *Labour Relations Act* does not violate s. 2(d) where it still provides a meaningful exercise of the right of association and a dispute resolution mechanism.

Syndicat de la fonction publique du Québec v Québec (Attorney General), [2010] 2 SCR 61

- Labour relations; s.124 of the *Act Respecting Labour Standards* is not implicitly incorporated into every collective agreement and the arbitrator has the necessary jurisdiction to dispose of the grievances.

Consolidated Fastfrate Inc. v Western Canada Council of Teamsters, [2009] 3 SCR 407

- Jurisdiction; freight forwarders that are not themselves engaged in interprovincial transport of freight and that simply contract with interprovincial carriers remain subject to provincial jurisdiction.

3. SCC Cases Heard and Reserved – Where We May Go

Workers' Compensation Board of BC v Guiseppe Figliola, et al. (SCC File No. 33648)

- Administrative Law/Standard of Review; can the BC Human Rights Tribunal re-hear an issue already decided finally by another tribunal and what is the standard of review applicable to its decision to proceed?

Gilles Doré v Pierre Bernard, in his capacity as Assistant Syndic of the Barreau du Québec, et al. (SCC File No. 33594)

- Labour Law/ Standard of Review; what is the standard of review applicable to a decision of committee on discipline and court review of that decision?

Information and Privacy Commissioner v Alberta Teachers' Association (SCC File No. 33620)

- Administrative Law/Judicial Review; should the decision of a tribunal which breaches a statutorily imposed time limit be quashed?

4. SCC Cases in the Hopper, Yet to be Heard

Newfoundland & Labrador Nurses' Union v Her Majesty the Queen in Right of Newfoundland & Labrador, et al. (SCC File No. 33659)

- Labour Law; reasonableness of decision despite breach of duty to provide reasons by arbitrator.

Nor-Man Regional Health Authority Inc. v Manitoba Association of Healthcare Professionals (SCC File No. 33795)

- Labour Law; definition and requirements of the doctrine of estoppel as applied by labour arbitrators.

PSAC v Canada Post Corporation, Canada Human Rights Commission (SCC File Nos. 33668, 33669)

- Standard of Proof; rebutting presumption that expert tribunal applied correct standard.

* I (Eugene Meehan, Q.C.) argued this one, 'came second' (with strong dissent by Abella J.); clearly wrongly decided (not Abella, but the majority)).