WeirFoulds LLP

Case Law Update: Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)

December 21, 2011

2011 SCC 62 (released December 15, 2011)

Administrative Law Role and Adequacy of Reasons *Dunsmuir* principles of "justification, transparency and intelligibility"

This Supreme Court of Canada decision clarified the proper approach for judicial review of an arbitrator's reasons under the principles previously set out in *Dunsmuir v. New Brunswick*. In *Dunsmuir* the Court held:

> *In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.*

This case involved the judicial review on a reasonableness standard of an arbitrator's award in a dispute involving the calculation of vacation benefits under a collective agreement. In a 12-page decision, the arbitrator outlined the relevant facts, arguments, provisions of the collective agreement and applicable interpretive principles, and concluded that, under the collective agreement, a permanent employee could not include time previously spent as a casual employee for purposes of calculating his or her vacation entitlement.

The reviewing chambers judge found that the arbitrator's analysis and conclusion made up only three paragraphs of the decision, were largely repetitive, and did not adequately address the difference between the entitlements of casual employees versus permanent employees. Finding that the arbitrator's reasons required "more cogency" and that his conclusion was "completely unsupported by any chain of reasoning that could be considered reasonable", the judge set aside the arbitrator's decision.

The Court of Appeal overturned the judge's decision and restored the arbitrator's decision. While the arbitrator's reasons could have been more comprehensive, the Court held they were sufficient to satisfy the *Dunsmuir* criteria because, when read as a whole and in context, they demonstrated that he had grappled with the substantive live issues necessary to decide the matter.

On appeal, the Supreme Court of Canada upheld the arbitrator's decision, finding that his reasons provided a reasonable basis for his conclusion.

The Court clarified that a proper reasonableness review under the *Dunsmuir* criteria does not involve a separate analysis of the "adequacy" of reasons which could serve as a stand-alone basis for quashing a decision. Rather, *Dunsmuir* requires a "more organic exercise" in which the reasons are read together with the outcome to determine whether they show that the result falls within a range of possible outcomes. While the reviewing court should not substitute its own reasons, it may look to the record, if necessary, in order to assess the reasonableness of the outcome.

The Court held that a decision-maker's reasons do not need to include all arguments or explicit findings on each element leading to its final conclusion. Indeed, the Court emphasized that such a requirement would paralyze the purposes of speed, economy and informality underlying the grievance arbitration process.

The Court also rejected the argument that the deficient quality of reasons given could in effect amount to "no reasons", thereby triggering concerns of procedural fairness and a correctness standard of review under *Baker v. Canada (Minister of Citizenship and Immigration)*. Rather, where reasons are given, any challenge to those reasons or the result of the decision should be made within the reasonableness analysis.

This decision indicates that it will generally be difficult to challenge a decision based on an assessment of the thoroughness of its reasons; if the reasons allow the reviewing court to understand why the decision-maker made its decision and to determine whether the conclusion is within the range of acceptable outcomes, the Supreme Court has indicated that the *Dunsmuir* criteria are met.

WeirFoulds LLP

www.weirfoulds.com

Toronto Office
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office
1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035