

ADMINISTRATIVE LAW – 2010 YEAR IN REVIEW

Prepared by Sara Blake and Leslie McIntosh

Standard of Review

Makhi v. Thunder Bay Police Association

2010 ONSC 3387 (Div.Ct.)

- Statutory standard of review of patently unreasonable in the Human Rights Code

Shaw v. Phipps

2010 ONSC 3884 (Div.Ct.)

- Standard of review is reasonableness in the Human Rights Code

Justiciability

Bot Construction Ltd. v. Ontario (Ministry of Transportation)

(2009), 99 O.R. (3d) 104 (Div. Ct.), appeal allowed 2009 ONCA 879

- Is a government procurement decision subject to judicial review?

Beauchamp v. Canada (Attorney General)

2009 FC 350

- Governor in Council's ongoing failure to proclaim statutory amendments into law is not subject to judicial review

Babineau v. Ontario (Lieutenant Governor)

[2009] O.J. No. 4230 (Div. Ct.)

- Lieutenant Governor's granting of royal assent to a Bill is not subject to judicial review

Judicial Review Procedure

MiningWatch Canada v. Canada (Fisheries & Oceans)

2010 SCC 2

- Even though the court found that statutory procedural requirements were not followed, the court exercised its discretion to refuse a remedy on judicial review

Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)

2010 NSCA 8; motion for leave to appeal to SCC pending

- A writ of prohibition is a drastic remedy that will be issued only if the tribunal's lack of jurisdiction is clear & beyond doubt [citing a "Professor Blake"!] -- application for judicial review of tribunal's jurisdiction to proceed with a hearing is premature

Pacific Newspaper Group Inc. v. Communications, Energy & Paperworkers Union of Canada, Local 2000

2009 BCSC 962

- Tribunal standing on judicial review

Inter-Leasing Inc. v. Ontario (Minister of Finance)

[2009] O.J. No. 4714 (Div. Ct.)

- Record on judicial review may not include privileged settlement discussions

Enforcement of tribunal orders

Commissioner of Competition v. Toshiba of Canada Ltd.

(2010), 100 O.R. (3d) 535 (S.C.J.)

- Court issued order compelling Toshiba to comply with disclosure order issued by Commissioner for purpose of an investigation
- court procedure: to protect confidentiality of investigation, respondent does not have a right to disclosure of investigation file nor to cross-examine Commissioner's affiant

Ontario Securities Commission v. Robinson

(2009), 99 O.R. (3d) 614 (S.C.J.); (2009), 99 O.R. (3d) 739 (S.C.J.); (2010), 100 O.R. (3d) 451 (S.C.J.)

- Witness refused to comply with subpoena – contempt application, jail sentence

Minister's power to control statutory agency

Canada (Canadian Wheat Board) v. Canada (Attorney General)

2009 FCA 214, leave to appeal to SCC refused

- disagreement between Minister and Board re whether to continue monopoly – Minister has authority to direct that Board provide choice (i.e. abolish monopoly)

Toronto (City) v. R & G Realty Management Inc.

[2009] O.J. No. 3358 (Div. Ct.)

- Ontario Municipal Board must decide planning issues in a manner consistent with Provincial Policy – it is not enough to “have regard” to the policy

Tribunal Authority

R. v. Conway

2010 SCC 22

- jurisdiction of tribunals to hear and decide *Charter* and other constitutional issues

Canada (Attorney General) v. Mowat

2009 FCA 309, leave to appeal to SCC granted

- Authority of human rights tribunal to award compensation for expenses, incurred as a result of the discriminatory practice, does not include legal costs of the human rights proceeding

Ontario (Attorney General) v. Taylor

(2010), 98 O.R. (3d) 576 (C.A.)

- ORB does not have statutory authority to order a party to pay the costs of a psychiatric assessment ordered by the board

Saskatchewan Government Insurance v. Speir

2009 SKCA 73

- Authority of the Automobile Injury Appeal Commission to award expenses, does not include legal costs

Jackson v. Ontario (Minister of Natural Resources)

2009 ONCA 846

- Minister does not fetter discretion when accepting recommendation of a Great Lakes Committee (of Ontario & 4 states) as to total allowable fish catch

Smith v. Nova Scotia (Department of Community Services)

2009 NSSC 86

- Mandamus issued to compel Department to comply with order of Income Assistance Appeal Board reinstating benefits

Ontario (Liquor Control Board) v. Magnotta Winery Corp.

(2009), 97 O.R. (3d) 665 (Div. Ct.); appeal to Court of Appeal heard September 15, 2010

- Standard of review of interpretation of s.19 of FIPPA is correctness.
- IPC may not order disclosure of documents that are subject to settlement privilege.

Appointment of tribunal members

Saskatchewan Federation of Labour v. Saskatchewan (Attorney General)

2010 SKCA 27

- Court upheld the termination by Order in Council of the appointments of the Chair & 2 Vice-Chairs of the Labour Relations Board

Tribunal procedure

Interprovincial Summonses Act

R.S.O. 1990, c. I.12

- Amended effective Dec 15, 2009 to permit all tribunals to use it to subpoena witnesses who are in other provinces

Mavi v. Canada (Attorney General)

(2009), 98 O.R. (3d) 1 (C.A.), appeal to be heard December 9, 2010

- Does the government owe an administrative law duty of procedural fairness when enforcing its contractual rights? – sponsorship undertakings given to sponsor family class immigrants

Puar v. Assn. of Professional Engineers & Geoscientists

2009 BCCA 487

- There is no right to be heard before the notice of hearing is issued

Baron v. Nova Scotia (Community Services)

2009 NSSC 122

- Repeated applications by an individual for social assistance may be dismissed on the ground of issue estoppel in the absence of changed circumstances

Black v. Canada (Minister of Citizenship & Immigration)

2009 FC 703

- Adequacy of representation of incapable adult by his designated representative (Mom)

Law Society of Upper Canada v. Igbinosun

(2009), 96 O.R. (3d) 138 (C.A.)

- Request by a party for an adjournment of the hearing – factors to be considered

Lockerbie & Hole Industrial Inc. v. Alberta (Human Rights & Citizenship Commission)

2009 ABQB 241; appeal pending

- Onus of proof is on complainant in human rights proceeding – the fact that the respondent has evidence and more litigation resources does not alter the burden of proof, especially where there is a right to pre-hearing disclosure

Lycka v. Alberta (Information & Privacy Commissioner)

2009 ABQB 245

- In an investigation of breach of privacy, the Privacy Commissioner breached the duty of fairness by refusing to disclose to the respondents the identity of the complainants – factors to consider when determining whether to disclose identity of complainants

Scott v. Ontario (Racing Commission)

[2009] O.J. No. 2858 (Div. Ct.)

- Confession to police officer is admissible in discipline proceeding – voluntariness goes to weight, not to admissibility – criminal law rules on admissibility do not apply

Gedge v. Hearing Aid Practitioners Board

2009 NLTD 110

- Waiver – a party who failed to attend the hearing may not raise allegations of bias on judicial review

Tseng v. Toronto (City)

[2009] O.J. No. 5612 (Div. Ct.)

- Waiver – a party who failed to attend the hearing may not, on appeal, attach the evidence upon which the Board based its decision

Jacobs Catalytic Ltd. v. International Brotherhood of Electrical Workers, Local 353

2009 ONCA 749

- Labour board was functus when it issued supplementary reasons for decision

Bias**Victoria v. Canada (Minister of Citizenship & Immigration)**

2009 FC 388

- Statistics of a board member's decisions in other similar cases cannot be used as evidence of bias because how the member decided other cases is irrelevant

Chretien v. Canada (Commission of Inquiry into the Sponsorship Program etc.)

2010 FCA 283

- Statistics of a board member's decisions in other similar cases cannot be used as evidence of bias because how the member decided other cases is irrelevant

Lawsuits concerning exercises of statutory powers

Marcotte v. Longueuil (City)

[2009] 3 S.C.R. 65

- The validity of a municipal by-law should be challenged by way of the statutory procedure to declare a by-law invalid, not by way of class proceeding

TeleZone Inc. v. Canada (Attorney General)

(2008), 94 O.R. (3d) 19 (C.A.), appeal to SCC heard

- 6 appeals to SCC under reserve
- whether plaintiffs can sue the Federal Crown, without first applying to the Federal Court for judicial review of the legality of the exercise of statutory power.

Ontario v. Gratton-Masuy Environmental Technologies Inc. (c.o.b. EcoFlo Ontario)

2010 ONCA 501

- Building Materials Evaluation Commission does not have the legal capacity to be sued – remedies of declaration & injunction cannot be obtained by way of action against a non-suable entity – judicial review is an adequate alternative remedy
- Tort of misfeasance in public office – claim against individual members of Commission struck for failure to plead particulars of malice

Abarquez v. Ontario

(2009), 95 O.R. (3d) 414 (C.A.), leave to appeal to SCC refused

- Plaintiffs were nurses who became ill with SARS
- Ontario does not owe a private law duty of care to individuals who contract a communicable disease – not even to nurses who are required to follow government directives respecting the treatment of patients who have communicable diseases

River Valley Poultry Farm Ltd. v. Canada (Attorney General)

2009 ONCA 326, leave to appeal to SCC refused

- Neither the Canadian Food Inspection Agency nor Health Canada owed a private law duty of care in negligence to the plaintiff to conduct a timely and competent investigation of whether the plaintiff's flock was infected by a potentially dangerous strain of salmonella. Action dismissed.

Licensing

Law Society of Upper Canada v. Neinstein

(2010), 99 O.R. (3d) 1 (C.A.)

- Fresh evidence filed on appeal to CA from judicial review decision of Div Ct.
- Criminal law test for assessing credibility is not appropriate in civil cases.
- Reasons inadequate in light of importance of issue to individual.

Alves v. Ontario (Superintendent of Financial Services)

[2009] O.J. No. 2950 (Div. Ct.)

- Application for licence – consideration of past conduct

Ontario (Motor Vehicle Dealers Act, Registrar) v. Unity-A-Automotive Inc.

[2009] O.J. No. 5198 (Div. Ct.)

- Application for licence – consideration of past conduct

Prestige Toys Ltd. v. Ontario (Motor Vehicle Dealers Act, Registrar)

[2009] O.J. No. 3437 (Div. Ct.)

- Revocation of licence – consideration of past conduct