

Adequacy of Reasons



CIAJ “Top 10 Issues in
Administrative Law”

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Lingering Question post-*Dunsmuir*

- What are reasonable reasons and how explicit must reasons be?

Nor-Man, 2011 SCC 59

- application of the reasonableness standard:
 - Justification, transparency intelligibility
 - A quality requirement of the reasons/outcome of decision-making process

Nor-Man, 2011 SCC 59

Application of the reasonableness standard:

- **58** In my view, the labour arbitrator's reasons are not just transparent and intelligible, but coherent as well. They set out in detail the evidence, the submissions of the parties, and the arbitrator's own analysis. The arbitrator reviewed the decisions relied on by the parties, and he identified and applied the precedents he found relevant and persuasive. They are consistent with his decision, and his reasons are amply sufficient to explain why he imposed the remedy of estoppel in this case.

Nfld and Lab. Nurses' Assn., 2011 SCC 62

- ❑ issue - whether arbitrator's reasons satisfied *Dunsmuir* criteria of demonstrating: "justification, transparency and intelligibility" (para. 47, *Dunsmuir*)
- ❑ and whether the reasons engaged procedural fairness
- ❑ dispute underlying the arbitrator's award involved the calculation of vacation benefits.

Nfld and Lab. Nurses' Assn., 2011 SCC 62

Facts:

- While casual employees are generally entitled to benefits under the collective agreement, they are expressly excluded from a number of benefits including the vacation entitlement for permanent employees. Instead they receive 20% of the basic salary in place of vacation entitlement benefit;
- the arbitrator had to decide whether time as a casual employee should be credited towards annual leave entitlement if that employee became permanent.

Nfld and Lab. Nurses' Assn.,

2011 SCC 62

- **12-page decision of the arbitrator included:**
 - **the facts of the case, the arguments of the parties and the relevant provisions of the collective agreement**
 - **a number of applicable interpretive principles**

- **reasons of the arbitrator:** casual employees as defined in the collective agreement, work occasionally and are not required to work even when they are called. The collective agreement also sets out a list of benefits that casual employees are specifically not entitled to. In place of those benefits, casual employees received a benefit of 20% per basic salary. One of the benefits from which they are explicitly excluded is the benefit dealing with the length of vacation time

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- **ultimately, arbitrator agreed with the employer that the casual employee time could not be used in calculating length of service towards vacation entitlement when the employee became permanent, temporary or part-time**

Nfld and Lab. Nurses' Assn., 2011 SCC 62

- Does *Dunsmuir* require a 2-part test to be met on reasonableness of admin decision-maker's reasons?
 - 1) does the outcome fall within the range of possible outcomes?
 - 2) do the reasons set out a line of analysis that reasonably supports the conclusion reached?
- Chambers judge (1st level of reviewing judge) had applied this 2-part test; found reasons unreasonable

Nfld and Lab. Nurses' Assn., 2011 SCC 62

- *Dunsmuir* does not stand for the proposition that a reviewing court must undertake two discrete analyses—one for reasons and a separate one for the result
- the exercise is an organic one:
 - reasons are to be read together with the outcome and serve the purpose of showing whether the result falls within the range of possible outcomes
- Relies on Dyzenhaus' theory

Nfld and Lab. Nurses' Assn.,
2011 SCC 62

- 2 other general principles (paras 15-16):
 1. showing "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48) means that courts should not substitute their own reasons, but they may, if they find it necessary, **look to the record for the purpose of assessing the reasonableness of the outcome.**

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2. Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. **A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion**

Nfld and Lab. Nurses' Assn., 2011 SCC 62

- Connection between reasons and procedural fairness
 - *Baker* – duty to give some form of reasons in certain circumstances; procedural fairness breached if no reasons given when required (correctness review)
 - *Nfld*– quality of reasons – challenges to reasoning/result of the decision should be made within *Dunsmuir* reasonableness analysis (reasonableness review)

Alberta Teachers' Association, 2011 SCC 61

1. More on reasons – do implied reasons exist? If so, how should they be reviewed?