Recent Issues In Jurisdiction CIA J - May, 11, 2012

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Overview

- Defining Jurisdiction
- Determining Jurisdiction
- Reviewing Jurisdictional Determinations
- Reflections
- Discussion

Figliola, SCC, 2011

Facts and procedural history:

- 3 workers - injured at work, suffered chronic pain, WCB awarded fixed amount
- argued that the WCB policy that provided the fixed award was among other things in violation of section 15 of the *Charter* and discriminatory under the BC *Human Rights Code*.

Figliola, SCC, 2011

Facts and procedural history cont'd:

- first level of review was before Review Officer; generally next step is WCAT
- Review Officer reviewed the chronic pain policy and concluded that it was not contrary to the BC *Human Rights Code*
- legislative amendments removed WCAT's ability to hear Figliola's appeal from Review Officer. *Judicial review was still available*

Figliola, SCC, 2011

Facts and procedural history cont'd:

- Instead of JR, attempted to re-argue HR Code issue before BCHRT

Figliola, SCC, 2011

BC *Human Rights Code*:

27 (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, **dismiss all or part of the complaint if that member or panel determines that…:**

- …

(f) the substance of the complaint or that part of the complaint **has been appropriately dealt with in another proceeding**;

Figliola, SCC, 2011

- **Issue**: had the substance of the complaint and appropriately dealt with by the workers' compensation board's Review Officer?
- **SOR – patent unreasonableness** as per BC *Administrative Tribunals' Act*
  - s. 59 of ATA indicates 4 alternative indicia of a patently unreasonable discretionary decision – arbitrary/bad faith; improper purpose; irrelevant factors or failure to consider statutory requirements

Figliola, SCC, 2011

Guiding principles for determining whether the matter has been 'satisfactorily dealt with' by a decision-maker with concurrent jurisdiction

- a tribunal should be guided by the goals of fairness and finality in decision-making and the avoidance of relitigation that underlie the finality doctrines rather than trying to apply the common law doctrines in their purest form

- **Avoid "forum shopping"**

Figliola, SCC, 2011

- Majority – relevant factors include:
  - para. 37 :
    - whether the previous decision-maker had concurrent authority to decide the matter
    - whether the issue was essentially the same
    - whether the parties had an opportunity to know the case to be met and to meet it

Figliola, SCC, 2011

- Decision held the patently unreasonable: majority
  - BC HRT focus almost exclusively on common law issue estoppel, instead of applying combined principles underlying the doctrines
  - BC HRT questioned review decision's process to see if it met necessary procedural requirements – incl. independence "JR question and irrelevant"
  - BC HRT criticized review officer for interpretation of human rights mandate
  - Indicated lack of expertise by review officer- irrelevant factor

Figliola, SCC, 2011

- Minority, concurring:
- Cromwell J.
- More flexibiiity must be imported into the finality analysis in context of administrative actors

Figliola, SCC, 2011

- Minority – Relevant Factors should include (para. 94):
  1. mandate
  2. Purposes of the 2 legislative schemes – any indicia
  3. existence of review mechanisms for the earlier decision and whether they were pursued
  4. opportunity to fully present case in the previous proceeding
  5. expertise of the previous decision-maker
  6. etc.

Reflections

- The changing face of jurisdiction
- Jurisdiction as both a restrictive and expansive concept
- Issues of exclusive and concurrent jurisdiction or policy decisions?

Jurisdiction -Discussion Questions

Consider how the following scenarios may raise concerns about jurisdiction at the tribunal level (ie within the context of the tribunals represented at your table) and/or on judicial review:

- **Jurisdiction over costs:**
  - Is it a legal term of art, not inherently in the jurisdiction of any tribunal? Must it be listed explicitly or available by necessary implication? ("make whole remedy")?
- **Interim orders/relief:**
  - must the power to grant such order/relief be explicitly granted or does it fall within the tribunal's powers as "master of its own process"?