OIL CITY ENERGY SERVICES LTD., Appellant v. ZEYAD FADHEL and TREVOR McGOWAN, Respondents

LRB File No. 203-17; March 2, 2018

Chairperson, Kenneth G. Love, Q.C.; (sitting alone pursuant to section 6-95(3) of *The Saskatchewan Employment Act*)

For the Appellant	Ian L. Wachowicz
For the Respondents, Zeyad Fadhel and Trevor McGowan	Trevor McGowan

Standard of Review – Board reviews standard of review as enunciated by the Supreme Court in *Edmonton City v. Edmonton East (Capilano) Shopping Centres Ltd.*[1] and determines that standard of review of a decision of an Adjudicator should be reasonableness.

Questions of Law – Board reviews categories of what constitutes a question of law. Board reviews jurisprudence related to categories of questions of law. Board finds questions raised in notice of appeal are not questions of law.

Decision of Adjudicator – Board reviews Adjudicator's decision on reasonableness standard. Board determines that the Adjudicator's decision was reasonable – Decision affirmed by Board.

REASONS FOR DECISION

Background:

[1] Oil City Energy Services Ltd. ("Oil City") appeals against a decision of an Adjudicator appointed to hear an appeal from a determination made by an Occupational Health and Safety Officer, dated August 12, 2016, that Oil City had discriminated against Zeyad Fadhel ("Fadhel") and Trevor McGowan ("McGowan") contrary to section 3-35 of *The Saskatchewan Employment Act* (the "*SEA*").

[1] 2016 SCC 47

[2] The adjudicator appointed to hear the appeal rendered her decision on March 30, 2017. The adjudicator denied the appeal. In a subsequent decision dated July 10, 2017, the Adjudicator awarded compensation to the Respondents for Oil City's discriminatory conduct as follows:

Trevor McGowan	*$45,370.37*
Zeyad Fadhel	*$42,387.69*

[3] Oil City did not appeal the first decision of the Adjudicator determining that they had discriminated against McGowan and Fadhel. Oil City did appeal the second decision of the Adjudicator with respect to the compensation awarded to McGowan and Fadhel.

[4] In its notice of appeal, Oil City raised five (5) grounds of appeal. At the hearing of this matter, they abandoned all but two (2) of these grounds. Those grounds of appeal were:

a) The Adjudicator erred in law by disregarding corporate personality and basing the quantum of damages owed by one entity to be determined by the employment of the Respondents with a separate and unrelated legal entity.

b) The Adjudicator erred in law by finding that by calling witnesses to defend itself, the appellant should have findings of fact made against its interest, essentially punishing the appellant for calling evidence on its behalf.

Facts:

[5] The Adjudicator made findings of fact based upon the testimony and documents provided to her. I will reference those findings, as necessary, in the reasons which follow. The Appellant challenged some of the findings of fact which, will be noted in the outline of the arguments presented at the hearing.

Relevant statutory provision:

[6] Relevant statutory provisions are as follows:

> ***Referral to occupational health officer***
> ***3-36****(2) If an occupational health officer decides that an employer has taken*

discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:

. . .

(c) subject to subsection (5), pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against;

. . .

Appeal of occupational health officer decision
3-53*(1) A person who is directly affected by a decision of an occupational health officer may appeal the decision.*

(2) An appeal pursuant to subsection (1) must be commenced by filing a written notice of appeal with the director of occupational health and safety within 15 business days after the date of service of the decision being appealed.

(3) The written notice of appeal must:

(a) set out the names of all persons who are directly affected by the decision that is being appealed;

(b) identify and state the decision being appealed;

(c) set out the grounds of the appeal; and

(d) set out the relief requested, including any request for the suspension of all or any portion of the decision being appealed.

(4) Subject to subsection (10) and section 3-54, an appeal pursuant to subsection (1) is to be conducted by the director of occupational health and safety.

(5) In conducting an appeal pursuant to subsection (1), the director of occupational health and safety shall:

(a) provide notice of the appeal to persons who are directly affected by the decision; and

(b) provide an opportunity to the persons who are directly affected by the decision to make written representations to the director as to whether the decision should be affirmed, amended or cancelled.

(6) The written representations by a person mentioned in clause (5)(b) must be made within:

(a) 30 days after notice of appeal is provided to that person; or

(b) any further period permitted by the director of occupational health and safety.

(7) The director of occupational health and safety is not required to give an oral hearing with respect to an appeal pursuant to subsection (1).

(8) After conducting an appeal in accordance with this section, the director of occupational health and safety shall:

(a) affirm, amend or cancel the decision being appealed; and

(b) provide written reasons for the decision made pursuant to clause (a).

> *(9) The director of occupational health and safety shall serve a copy of a decision made pursuant to subsection (8) on all persons who are directly affected by the decision.*
>
> *(10) Instead of hearing an appeal pursuant to this section, the director of occupational health and safety may refer the appeal to an adjudicator by forwarding to the adjudicator:*
>
> *(a) the notice of appeal;*
>
> *(b)all information in the director's possession that is related to the appeal; and*
>
> *(c) a list of all persons who are directly affected by the decision.*
>
> . . .
>
> ***Right to appeal adjudicator's decision to board***
> ***4-8****(1) An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.*
>
> *(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law.*

Arguments of Oil City:

[7] Oil City argued that both of the Respondents had been hired for a short duration of work and that at the time of the discriminatory action, they had only days to work. Oil City argued that the Adjudicator erred when she determined that the Respondents had a reasonable expectation of longer term work. Oil City argued that this error resulted from the Adjudicator's confusing the relationship between Oil City and a related company, OCS Group Inc.

[8] Oil City also argued that the Adjudicator took irrelevant factors into consideration and made an inappropriate presumption when she determined that she found it "incomprehensible" that Oil City would have elected to incur the costs involved in fighting the Occupational Health and Safety Officer's determination of a violation of the *SEA* if only issue was "two more days of employment"[2]

[2] See paragraph 37 of the Adjudicator's decision dated September 15, 2018

Arguments of the Respondents:

[9] The Respondents argued that the determination of a relationship between Oil City and OCS Group Inc. was a reasonable conclusion. The Respondents supported the decision of the Adjudicator.

Jurisdiction of the Board and Standard of Review:

[10] The Board's jurisdiction on appeals from an Adjudicator's decision is limited to questions of law. The Board identified three (3) categories of questions of law that could be considered in its seminal decision in *Wieler v. Saskatoon Convalescent Home*[3]. Those three (3) categories of questions are:

(a) Questions of law alone;
(b) Questions of mixed fact and law; and
(c) Findings of fact which may be reviewable as questions of law.

[11] In *Wieler*, the Board applied differing standards of review to each of these categories in accordance with the standard of review as then established by the Courts. Since that decision, the Supreme Court has provided its opinion regarding appeals in relation to questions of law in *Edmonton City v. Edmonton East (Capilano) Shopping Centres Ltd.*[4]. In that decision, the Supreme Court allowed an appeal from the determination by both the Alberta Court of Queen's Bench and the Alberta Court of Appeal which had determined the standard of review "on a question of law or jurisdiction of sufficient importance to merit an appeal" to be correctness. The Supreme Court disagreed with the lower courts. Madam Justice Karakatsanis, writing for the majority adopted the standard of reasonableness. At paragraphs 21-24 she said:

> *[21] The [Dunsmuir v New Brunswick, 2008 SCC 9 (CanLII), [2008] 1 S.C.R. 190] framework balances two important competing principles: legislative supremacy, which requires the courts to respect the choice of Parliament or a legislature to assign responsibility for a given decision to an administrative body; and the rule of law, which requires that the courts have the last word on whether an administrative body has acted within the scope of its lawful authority (paras. 27-31).*
>
> *(1) <u>Presumption of Reasonableness</u>*

[3] 2014 CanLII 76051 (SK LRB)
[4] 2016 SCC 47

> *[22] Unless the jurisprudence has already settled the applicable standard of review (Dunsmuir, at para. 62), the reviewing court should begin by considering whether the issue involves the interpretation by an administrative body of its own statute or statutes closely connected to its function. If so the standard of review is presumed to be reasonableness (Movement laïque Québécois v Saguenay (City), 2015 SCC 16 (CanLII); [2015] 2 S.C.R. 3, at para. 46). This presumption of deference on judicial review respects the principle of legislative supremacy and the choice made to delegate decision making to a tribunal, rather than the courts. A presumption of deference on judicial review also fosters access to justice to the extent the legislative choice to delegate a matter to a flexible and expert tribunal provides parties with a speedier and less expensive form of decision making.*
>
> *[23] The Dunsmuir framework provides a clear answer in this case. The substantive issue – whether the Board had the power to increase the assessment – turns on the interpretation of s. 467(1) of the MGA, the Board's home statute. The standard of review is presumed to be reasonableness.*
>
> *(2) Categories That Rebut the Presumption of Reasonableness*
>
> *[24] The four categories of issues identified in Dunsmuir which call for correctness are constitutional questions regarding the division of powers, issues "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise", "true questions of jurisdiction or vires", and issues "regarding the jurisdictional lines between two or more competing specialized tribunals" (paras. 58-61). When the issue falls within a category, the presumption of reasonableness is rebutted, the standard of review is correctness and no further analysis is required (Canadian Artists' Representation v National Gallery of Canada, 2014 SCC 42 (CanLII), [2014] 2 S.C.R. 197, at para. 13; McLean v British Columbia (Securities Commission), 2013 SCC 67 (CanLII), [2013] 3 S.C.R. 895, at para. 22). [Emphasis added.]*

[12] Madam Justice Karakatsanis then went on at paragraph [29] to confirm that the standard of review should be no different whether a statutory right of appeal with leave against an administrative tribunals decision qualified as a new category of matters to which the correctness standard should be applied. She said:

> *[29] At least six recent decisions of this Court have applied a reasonableness standard on a statutory appeal from a decision of an administrative tribunal (McLean; Smith v. Alliance Pipeline Ltd., 2011 SCC 7 (CanLII), [2011] 1 S.C.R. 160; Bell Canada v. Bell Aliant Regional Communications,2009 SCC 40 (CanLII), [2009] 2 S.C.R. 764; Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53 (CanLII), [2014] 2 S.C.R. 633; Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 S.C.R. 147; ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission), 2015 SCC 45 (CanLII), [2015] 3 S.C.R. 219).*

[13] She then concluded that the appropriate standard of review was reasonableness. Following the analysis suggested in *Edmonton East (Capilano)* to the statutory provisions in the *SEA*, This Board has also concluded that the reasonableness standard should be applied to appeals of Adjudicator's decisions under Parts II and III of the *SEA.*

[14] However, before I can embark upon a review of the Adjudicator's decision, I must consider if the notice of appeal raises a question of law in one of the categories outlined above.

Has the Appellant Raised a Question of Law?

[15] Onsite and Walker, in essence, in their Notice of Appeal, disagree with a number of findings of fact as well as the application of those facts to the statutory provisions, which were interpreted by the Adjudicator in her decision. Among them is the determination that there was a reasonable expectation that the Respondents could have looked forward to more than a couple of days work. Additionally, the Appellants disagree with the finding by the Adjudicator that there was a close relationship between Oil City and OCS Group Inc.

[16] Each of the issues raised by the Appellant is an appeal against a finding of fact by the Adjudicator and is not a pure error of law. Reviewable questions of fact that may be reviewable as questions of law were described by the Saskatchewan Court of Appeal in *P.S.S. Professional Salon Services Inc. v. Saskatchewan (Human Rights Commission*[5] as follows:

> *…findings of fact may be reviewable as questions of law where the findings are unreasonable in the sense that they ignore relevant evidence, take into account irrelevant evidence, mischaracterize relevant evidence, or make irrational inferences on the facts.*

[17] In *Whiterock Gas and Confectionary v. Swindler*[6]*,* Mr. Justice Chcoine quoted extensively from the Court of Appeal's decision in *P.S.S.* At paragraphs 34-39 he says:

> *[34] While The Labour Standards Act limits appeals to this Court to questions of law or jurisdiction, findings of fact may be reviewable as questions of law where the findings are unreasonable in the sense that they ignore relevant evidence, take into account irrelevant evidence, mischaracterize relevant evidence, or make irrational inferences on the facts. In P.S.S. Professional Salon Services*

[5] [2007] SKCA 149 (CanLII)
[6] [2014] SKQB 300 (CanLII) at para [34]

Inc. v. Saskatchewan (Human Rights Commission), 2007 SKCA 149 (CanLII), 302 Sask. R. 161, (P.S.S.) Cameron J. explained how findings of fact may be subject to review as errors of law. He stated (at paras. 60-61):

> ***60*** *It is clear that the appeal against the decision of the tribunal comes down to its findings of fact. This is not to say that there is, therefore, no tenable ground for review of the decision, but it must be understood that the decision is only reviewable to the extent the findings of fact upon which it rests are attended by error of law.*
>
> ***61*** *The import of this was remarked upon in City of Regina et al. v. Kivela, 2006 SKCA 38 (CanLII), (2006), 266 D.L.R. (4th) 319 (Sask. C.A.), a case involving an appeal from the decision of a human rights tribunal. Speaking for the Court, Smith J.A. said:*
>
> *The traditional view, in these circumstances, is that the tribunal's factual determinations are subject to review only if and to the extent that findings constitute errors of law, as when there was no evidence before the tribunal that, viewed reasonably, was capable of supporting the tribunal's finding. (p. 343)*
>
> ***62*** *This ties in with the notion that "an unreasonable finding of fact" falls to be categorized as an error of law for the purposes of judicial review in the classical sense, and with the associated notion that when errors of law are open to judicial review unhindered by a privative clause then "unreasonable errors of fact", though no others, are subject to review: Blanchard v. Control Data Canada Ltd., 1984 CanLII 27 (SCC), [1984] 2 S.C.R. 476 at 494-95. It also ties in with the further notion that a tribunal "errs in law" if it ignores relevant evidence or evidence it is required to consider: Woolaston v. Minister of Manpower and Immigration,1972 CanLII 3 (SCC), [1973] S.C.R. 102; Canada (Director of Investigation and Research, Competition Act) v. Southam,1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748 at para. 41: "If the Tribunal did ignore items of evidence that the law requires it to consider, then the Tribunal erred in law." (Underlining added)*

[35] Cameron J. also referred to the case of Metropolitan Entertainment Group v. Nova Scotia (Workers Compensation Appeals Tribunal), 2007 NSCA 30 (CanLII), (2007), 278 D.L.R. (4th) 674, where the right of appeal, as in this case, was confined to questions of law or jurisdiction, and the appeal was based on a challenge to findings of fact. In that case, the Nova Scotia Court of Appeal also concluded (at para. 15) that there are situations where mis-stating or making egregious factual errors will amount to an error in law.

[36] Cameron J. further explained the rational for the proposition that findings of fact are capable of amounting to errors of law as follows, at para. 65:

> ***65*** *In any event, it is evident from the foregoing that findings of fact are capable of giving rise to a question of law for the purposes of a right of appeal so confined. It is instructive in this regard to recall that the facts as found are one thing, the process by which they are found is another, and it is here where a decision is most apt to be seen as giving rise to a question of law. Why? Because the fact-finding process, or method by which facts in dispute are determined in judicial and quasi-judicial*

> *settings, is underpinned by principle, as supplied by both statutory implication and common law. …*

[37] Cameron J. went on to describe the parameters of a hearing under The Saskatchewan Human Rights Code, S.S. 1979, c. S. 24.1 in the following terms, at para. 66:

> ***66*** *The Code provides for a hearing of disputed complaints by a tribunal, namely a lawyer in good standing with at least five years experience, or a person having experience and expertise in human rights law. A tribunal charged with the duty of inquiring into such a complaint is required by the Code to afford the parties the full opportunity to present evidence and make representations through counsel or otherwise. Subject to the power in the tribunal to receive and accept evidence and information on oath, affidavit, or otherwise as it considers appropriate, whether admissible in a court of law, there is little to distinguish the hearing from a trial. Similarly, there is little to distinguish the function of the tribunal from the function of a judge, for the tribunal is to hear the complaint and decide it on the basis of the evidence before it, dismissing the complaint if unsubstantiated or, if substantiated, giving effect to it by way of order. Indeed, the orders of the tribunal are subject to entry in the Court of Queen's Bench as orders of that Court.*

[38] In my opinion, the function of an adjudicator under The Labour Standards Act closely mirrors the function of tribunal established pursuant to The Saskatchewan Human Rights Code. It therefore follows that the conclusions reached by Cameron J. in P.S.S. at paras. 67 and 68 are applicable to this case. He stated:

> ***67*** *As a matter of statutory implication, then, persons fastened with the duties and exercising the powers of a human rights tribunal when called upon to hear a complaint, are required as a matter of principle (much as judges are), to determine the facts in controversy on the basis of the relevant evidence before them (leaving aside matters of fact in relation to which they may take judicial notice). Hence, they are required in principle to consider and weigh the relevant evidence as the faculty of judgment commends when exercised impartially, fairly, in good faith, and in accordance with reason, bearing in mind the governing standard of proof and the location of the onus of proof.*
>
> ***68*** *It follows, that a tribunal cannot reasonably make a valid finding of fact on the basis of no evidence or irrelevant evidence. Nor can it reasonably make a valid finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence. To do so is to err in principle or, in other words, to commit an error of law. (In addition to the cases referred to above, see Toneguzzo-Norvell v. Burnaby Hospital, 1994 CanLII 106 (SCC), [1994] 1 S.C.R. 114 at p. 121; Wade & Forsyth, Administrative Law (7th ed.) (Oxford: Clarendon Press, 1994) at pp. 316-320; Jones & de Villars, Principles of Administrative Law (4th ed.) (Toronto: Thomson Carswell, 2004) at pp. 244-43 and 431-436; and Hartwig and Senger v. Wright (Commissioner of Inquiry), et al., [2007] S.J. No. 337, 2007 SKCA 74 (Sask. C.A.) (CanLII)). Nor can a tribunal reasonably make a valid finding of fact based on an unfounded or irrational inference of fact. (Underling added.)*

> *[39] As regards the standard of review related to findings of fact, Cameron J. decided in P.S.S. that the reasonable simpliciter standard of review applied in that case. He stated, at para. 83, that "the issue whether a tribunal overlooked, disregarded or mischaracterized relevant material to the findings upon which its decision rests falls to be subjected to a 'significant searching or testing'." I intend to apply the standard of reasonableness in relation to the Adjudicator's finding of fact in this case also.*

[18] While the *Whiterock* case preceded the Supreme Court ruling in *Edmonton City v. Edmonton East (Capilano) Shopping Centres Ltd.*[7], Mr. Justice Chicoine nevertheless reviewed the decision on the basis of the reasonableness standard which we have adopted above.

[19] In the *Whiterock* case, Mr. Justice Chicoine found that the refusal by the Adjudicator to view a video recording that showed employee dishonesty amounted to a reviewable error of law. He says at paragraphs [48] to [52] as follows:

> *[48] Had the Adjudicator reviewed the DVDs or allowed them to be played during the hearing, he would have observed that the surveillance system records the date and time at the same time as the activity that is being recorded. The surveillance camera in the office recorded Mr. Swindler leaving the office at 23:00:00 on March 2, 2011. The surveillance camera above the cash register recorded Mr. Swindler opening a drawer under the cash register and removing a package of cigarettes at 23:00:07 on March 2, 2011. This is approximately seven seconds after leaving the office. The surveillance camera in the office records Mr. Swindler re-entering the office at approximately 23:00:21 on March 2, 2011, with a cigarette in his mouth and a package of cigarettes in his hand.*
>
> *[49] There is no question that the video corroborates Ms. Gopher's testimony that the theft of a package of cigarettes occurred on March 2, 2011, at which date Mr. Swindler was an employee of Whiterock. Given the express provision in s. 62.1(3) of The Labour Standards Act which states that an adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate, there was no reason for the Adjudicator in this case not to accept into evidence the letter from the security company employee who copied the information recorded by the surveillance system onto a DVD to the effect that the information recorded by the surveillance system cannot be tampered with. This would necessarily include the date and time of the recording.*
>
> *[50] In addition to corroborating Ms. Gopher's testimony, the video clearly and unequivocally contradicts the evidence of Mr. Swindler to the effect that "as of the date of the video, his employment had already been terminated." This puts the lie to his explanation that the video shows him taking cigarettes without paying for them after he had been dismissed as an employee. The Adjudicator's refusal to view the video for himself meant that he ignored relevant evidence which proved, on a balance of probabilities, that Mr. Swindler was dishonest, not only in respect of the theft of the cigarettes while he was an employee, but also when he testified at the hearing. This refusal to view the video evidence constituted an error of law in the manner contemplated by Cameron J. in P.S.S. (at para. 68) wherein he*

[7] 2016 SCC 47

> *stated that a tribunal cannot reasonably make a finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence.*
>
> *[51] The question which arises from the finding that Mr. Swindler did take a package of cigarettes without paying for them on March 2, 2011, is whether this is the kind of dishonesty which gives rise to a breakdown in the employment relationship. Iacobucci J. in McKinley makes the point that not every act of dishonesty will result in the dismissal of the employee and that the principle of proportionality must be applied. However, I am of the opinion that Mr. Swindler's act of dishonesty in taking a package of cigarettes without paying for them was serious and went to the core of the employment relationship. Ms. Gopher was entitled to expect that all of her employees, especially employees in supervisory positions, could be entrusted to care for and protect the assets of the business. Among Mr. Swindler's duties as a supervisor was to make an accurate count of the cigarette inventory on a daily basis in order to prevent theft and also to cash out at the end of the day. The theft of even one package of cigarettes by a manager in Mr. Swindler's position in my opinion warrants dismissal for just cause.*
>
> *[52] In consequence of my finding that the Adjudicator erred in law in failing to consider relevant evidence which proved at least on a balance of probabilities that Mr. Swindler committed a serious act of dishonesty while employed as a supervisor, I also conclude that Whiterock and Ms. Gopher did establish grounds to warrant dismissal for just cause. As a result, I will allow the appeal from the Adjudicator's finding confirming the Wage Assessment in relation to Mr. Swindler and rule that no amount is owed by Whiterock or Ms. Gopher to Mr. Swindler as pay in lieu of notice. It is not necessary for me to make any ruling on the issue whether overtime pay should have been included in calculating the amount of pay in lieu of notice and I decline to do so.*

[20] There is no such error in this case. Here, the Adjudicator made a thorough review of the evidence before her and made determinations of fact necessary to her decision. That review was both defensible in both law and fact. There was no evidence which the Adjudicator failed to consider. The Appellant's concern relates to the conclusions and findings of fact that she drew from that evidence. That is not, in my opinion, an error of law based upon the jurisprudence set out above.

The Issues raised:

[21] Even if the notice of appeal raised an error of law, the Adjudicator, in my opinion, did not reach an unreasonable conclusion in respect of the issues raised by Oil City.

[22] At paragraph 44 of her decision, the Adjudicator noted in respect to the issue of "What was the duration of Employment":

> *In light of all the evidence, I find that Oil City has failed to meet the onus of establishing that only short-term employment was contemplated. The Respondents had a reasonable anticipation of longer term work.*

[23] The Adjudicator carefully analyzed the evidence presented to her in reaching this conclusion. While the Appellant points to paragraph 37 of her decision as being an error of law, I disagree. The rationale provided by the Adjudicator in support of her conclusion stands without this comment. It is both defensible and falls within the range of possible acceptable outcomes.

[24] Similarly, the Adjudicator carefully analyzed the situation concerning the relationship between Oil City and OCG Group Inc. before concluding at paragraph 58 of her decision that:

> *Again, the onus is on the Appellant, Oil City. Yet nothing was filed in evidence to support Mr. Cousineau's allegations that there is "no relationship" between the two corporate entities. I therefore find that they are indeed, closely related.*

[25] The analysis by the Adjudicator was in each case reasonable. The decision of the Adjudicator, in this case, does not fall within one of the "exception" categories outlined by Madam Justice Karakatsanis in *East (Capilano)*. Had it been necessary, I would have dismissed the appeal on the ground that the Adjudicator's decision met the test of reasonableness.

[26] That standard was defined by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*[8] at paragraph 47 as follows:

> *Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquiries into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. 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.*

[8] 2008 SCC 9

[27] For these reasons, the appeal against the Adjudicator's decision is denied and the Adjudicator's decision will be affirmed. An appropriate order will accompany these reasons.

DATED at Regina, Saskatchewan, this **2nd** day of **March, 2018.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson